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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 303. 113.

WILLIAM HENRY BALDWIN, JR., AND SUMMERFIELD BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, TO THE USE OF D. FRANK HULL, COLLECTOR OF STATE AND COUNTY TAXES FOR WASHINGTON COUNTY, MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED AUGUST 2, 1899.

(17,481.)

13940

(17,481.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 367.

WILLIAM HENRY BALDWIN, JR., AND SUMMERFIELD BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, TO THE USE OF D. FRANK HULL, COLLECTOR OF STATE AND COUNTY TAXES FOR WASHINGTON COUNTY, MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 2, 1900.

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1 April Term, 1899.

STATE OF MARYLAND, *set:*

At a court of appeals for the State of Maryland, begun and held for the said State at the city of Annapolis, on the first Monday in April, being the third day of said month, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-third—

Hon. James McSherry, chief judge.
" Henry Page.
" James A. Pearce.
" David Fowler.
" A. Hunter Boyd.
" Charles B. Roberts.
" John P. Briscoe.
" Sam'l D. Schmucker.

Allan Rutherford, clerk.

Among other were the following proceedings, to wit:

2 *Petition & Assignment of Errors. Filed July 18th*, 1899.

In the Court of Appeals of Maryland.

WILLIAM HENRY BALDWIN, JR., and SUMMERFIELD BALDWIN, Appellants,
against
STATE OF MARYLAND, Use of D. FRANK HULL, Collector, &c., Appellee.

To the Honorable James McSherry, chief judge of the court of appeals of Maryland:

William Henry Baldwin, Jr., and Summerfield Baldwin, appellants in the above-entitled cause, respectfully pray your honor to allow a writ of error to the Supreme Court of the United States to be transmitted to said court with the record and proceedings in said cause, because they say in said record and proceedings and in the rendition of the judgment of the court of appeals therein error hath happened, to the great damage of them, the said William Henry Baldwin, Jr., and Summerfield Baldwin, and to each of them, there having been drawn in question therein the validity of a statute of and an authority exercised under the State of Maryland, on the ground of their being repugnant to the Constitution of the United States, and the decision of the said court of appeals being in favor of such their validity, and there having been drawn in question therein the construction of a clause of the Constitution of the United States and the decision of the said court of appeals being against the title, right, privilege, and immunity specially set up and claimed under such clause of the said Constitution, all of which

will more in detail appear from the assignment of errors which is filed with this petition.

3 And as in duty, &c.

SUMMERFIELD BALDWIN,
For Himself & W. H. Baldwin, Jr., Petitioners.
CHARLES A. BOSTON,
Of Counsel for William Henry Baldwin, Jr., and Summerfield Baldwin, Petitioners.

The above petition is granted and the writ of error is allowed as therein prayed this 12 day of July, 1899, upon filing a supersedeas bond in the penalty of four thousand dollars.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

In the Court of Appeals of Maryland.

WILLIAM HENRY BALDWIN, JR., and SUMMERFIELD BALDWIN, Appellants,
against
STATE OF MARYLAND, Use of D. FRANK HULL, Collector, &c., Appellee.

The appellants in this cause, William Henry Baldwin, Jr., and Summerfield Baldwin, in connection with their petition for a writ of error make the following assignment of errors which they aver are manifest in the record and proceedings herein:

1. That the law of the State of Maryland whereby and whereunder the taxes described in the record and proceedings were

4 levied and assessed, as expounded by the judgment of the court of appeals of Maryland, is in conflict with the fourteenth (14) amendment of the Constitution of the United States, inasmuch as said law so expounded abridges the privileges and immunities of citizens of the United States, to wit, the privileges and immunities of the appellants and of William Woodward Baldwin and Columbus Calvert Baldwin and of each of them, severally citizens of the United States, contrary to said fourteenth amendment of the Constitution of the United States.

2. That the law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed, as expounded by the judgment of the court of appeals of Maryland, is in conflict with the fourteenth amendment of the Constitution of the United States, inasmuch as said law so expounded deprives the said appellants and the said William Woodward Baldwin and Columbus Calvert Caldwin, severally citizens of the United States and within its jurisdiction, and each of them, of property without due process of law and contrary to the fourteenth amendment of the Constitution of the United States.

3. That the law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed, as expounded by the judgment of the court of appeals of Maryland, is in conflict

with the fourteenth amendment of the Constitution of the United States, inasmuch as said law so expounded denies to the appellants and to William Woodward Baldwin and Columbus Calvert Baldwin, and to each of them, within the jurisdiction of the State of Maryland, the equal protection of the laws.

4. That the law of the State of Maryland whereby and
5 whereunder the alleged returns of the register of wills of Washington county, described in the record and proceedings, were directed to be made and were made, as expounded by the judgment of the court of appeals of Maryland, is in conflict with article 4, section 2, of the Constitution of the United States, inasmuch as said law so expounded denies to William Woodward Baldwin and Columbus Calvert Baldwin and each of them, severally citizens of the United States and of the State of New York, the privileges and immunities of citizens of the State of Maryland.

5. That the law of the State of Maryland whereby and whereunder the said alleged returns of the register of wills of Washington county aforesaid were directed to *me* made and were made, as is expounded by the judgment of the court of appeals of Maryland, is in conflict with the fourteenth amendment to the Constitution of the United States, inasmuch as said law so expounded deprives the appellants and each of them and the said Woodward Baldwin and Columbus Calvert Baldwin, severally citizens of the United States and within its jurisdiction, of property without due process of law.

6. That by the record and proceedings aforesaid it appears that the judgment aforesaid was given for the appellee against the appellants;

Whereas by the supreme law of the land, as embodied in the Constitution of the United States, the said judgment ought to have been given for the said appellants against the appellee.

SUMMERFIELD BALDWIN,
For Himself & W. H. Baldwin, Jr., Appellants.

CHARLES A. BOSTON,
Of Counsel for William Henry Baldwin, Jr., and Summerfield Baldwin, Appellants.

6 *Writ of Error. Filed July 18th, 1899.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of appeals of Maryland, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of Maryland, before you or some of you, between William Henry Baldwin, Jr., and Summerfield Baldwin, appellants, and State of Maryland, use of D. Frank Hull, collector of State and county taxes for Washington county, in State of Maryland, appellee, a manifest error hath happened, to the great damage of the said William Henry

Baldwin, Jr., and Summerfield Baldwin, appellants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

7 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of July, in the year of [SEAL.] our Lord one thousand eight hundred and ninety-nine.

JAS. W. CHEW,
Clerk of the Circuit Court of the United States for the District of Maryland.

Allowed by—
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

8 Filed July 19th, 1899.

Supreme Court of the United States.

WILLIAM H. BALDWIN, JR., and SUMMERFIELD BALDWIN, Plaintiffs in Error,
against
STATE OF MARYLAND, Use of D. FRANK HULL, Defendant in Error.

The plaintiffs in error above named having made their assignment of errors herein and annexed the same to a petition for the allowance of a writ of error, and thereupon said writ of error having been allowed by the Honorable James McSherry, chief judge of the court of appeals of Maryland, and said writ of error having been duly issued, addressed to the judges of the court of appeals of Maryland:

Now, the said William H. Baldwin, Jr., and Summerfield Baldwin, plaintiffs in error, pray that the judgment of the court of appeals of Maryland described in said writ of error be reversed, and that the Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

CHARLES A. BOSTON,
Attorney and of Counsel for Above-named Plaintiffs in Error.

Citation. Filed July 18th, 1899.

UNITED STATES OF AMERICA, *ss.:*

The State of Maryland, to the use of D. Frank Hull, collector of State and county taxes for Washington county, in the State of Maryland, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of Maryland, wherein William Henry Baldwin, Jr., and Summerfield Baldwin are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this 13th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Due and timely service of the within citation acknowledged this 17th day of July, 1899.

J. MARKHAM MARSHALL,
Att'y for Appellees, State of Maryland, and to the Use of D. Frank Hull, Collector of State and County Taxes for Washington County, in the State of Maryland.

10 *Record.*

In the Court of Appeals of Maryland.

WILLIAM HENRY BALDWIN, JR., SUMMERFIELD BALDWIN,
vs.
THE STATE OF MARYLAND, Use of D. FRANK HULL, Collector, &c.

Appeal from the superior court of Baltimore city.

Appeal to April term, 1899.

Charles G. Baldwin, Charles A. Boston, for appellants.
Chas. Marshall & Sons, for appellee.

Filed March 31st, 1899.

11 Appeal from the Superior Court of Baltimore City.

In the Superior Court of Baltimore City.

WILLIAM HENRY BALDWIN, JR., SUMMERFIELD BALDWIN,
vs.
THE STATE OF MARYLAND, Use of D. FRANK HULL, Collector, &c.

Action commenced January 5th, 1898.

Declaration.

The State of Maryland to the use of D. Frank Hull, collector of State and county taxes, for the county of Washington, in the State of Maryland, by Charles Marshall and Sons, attorneys, sues William Henry Baldwin, Jr., and Summerfield Baldwin, both of Baltimore city, for that:

1. The said D. Frank Hull was collector of State and county taxes for the county of Washington, in the State of Maryland, in and during the years 1893, 1894 and 1895, and by virtue of his said office of collector, he was and still is entitled to receive and collect all State and county taxes levied and assessed by law upon property real and personal taxable within said county, in and during each and all of the years aforesaid.

2. That the register of wills of Washington county, as required by law, in each of his several annual returns for the years in question to the county commissioners of Washington county, returned as liable to taxation within said county, the sum of $44,856, shown by the annual accounts of a certain William Woodward Baldwin, to be in his hands as guardian by appointment of the orphans' court of Washington county, of a certain Columbus C. Baldwin, of the city and State of New York.

12 3. That upon the amounts shown by the several returns of the said register of wills, State and county taxes were duly levied and assessed, which with interest to January 1st, 1898, con-

ists of the following-named amounts, to wit: $488.11, for the year 893; $490.94, for the year 1894, and $455.93 for the year 1895, and hat in addition to the above-named amounts, costs to the amount of $37.05, were incurred in seeking to effect the collection of the said axes.

4. That the said William Woodward Baldwin was appointed guardian of the said Columbus C. Baldwin by the orphans' court of Washington county, and duly qualified as such on or about the August 21st, 1891, and that it was his duty as guardian to pay all State and county taxes properly levied and assessed upon the estate of his said ward, Columbus C. Baldwin, but that the said William Woodward Baldwin has always refused and still refuses to pay said taxes so as aforesaid levied and assessed upon the estate in his hands as guardian.

5. That by their writing obligatory, executed on or about August 19th, 1891, the said defendants, William Henry Baldwin, Jr., and Summerfield Baldwin, both of the city of Baltimore, and the State of Maryland, and the said William Woodward Baldwin and a certain Christopher Columbus Baldwin, both of the city and State of New York, bound themselves jointly and severally unto the State of Maryland in the penalty of $100,000, for the full and faithful performance by the said William Woodward Baldwin, guardian as aforesaid, of all the duties imposed upon him by the laws of the State of Maryland, including the duty to pay all State and county taxes levied and assessed upon the estate in his hands as guardian as aforesaid, which taxes the said William Woodward Baldwin has refused and still refuses to pay.

5. That the said William Henry Baldwin, Jr., and the said Summerfield Baldwin are the only obligors named in the said writing obligatory that reside within the State of Maryland, the said William Woodward Baldwin being a resident of the city of New York, and the said Christopher Columbus Baldwin having been until his decease, prior to the institution of this suit, a resident of said city.

And, therefore, the plaintiff claims from the defendants herein named, the sum of $2,000.

CHARLES MARSHALL & SONS,
Attorneys for Plaintiff.

Pleas.

(Filed January 25th, 1898.)

And the said defendants, William Henry Baldwin, Jr., and Summerfield Baldwin, by William Woodward Baldwin, Charles A. Boston and Charles G. Baldwin, their attorneys, for plea to the declaration of the plaintiff herein, say:

13 And for a fifth plea the defendants say:

V. That the taxes alleged to have been levied and assessed for the year 1893, were not levied within four years before this suit, and these defendants hereby plead sec. 83, in art. 81 of the Public General Laws of Maryland, in bar of any recovery of such taxes as are legally barred by said statute.

And for a sixth plea, these defendants say:

VI. That the alleged cause of action did not accrue within four years before this suit.

And for a seventh plea, the defendants say:

VII. That the alleged cause of action for the taxes said to have been levied and assessed for the years 1893 and 1894, did not accrue within three years before this suit.

And for an eighth plea, these defendants say:

VIII. That the alleged cause of action did not accrue within three years before this suit.

And for a tenth plea, these defendants say:

X. That the said alleged taxes, each and all, were levied and assessed subsequent to the arrival of the said Columbus C. Baldwin, at the full age of twenty-one years, to wit, subsequent to the 6th day of January, 1893, and that the said William Woodward Baldwin was appointed guardian to the said Columbus C. Baldwin, until the age of twenty-one years and no longer, and that said William Woodward Baldwin was not the guardian of said Columbus C. Baldwin, and was not charged with the duty of paying any of said alleged taxes whatsoever when or after the same were levied or assessed.

And for an eleventh plea, these defendants say:

XI. That the said property alleged to have been returned by the register of wills as liable to taxation within his said county was not liable to taxation within said county; that said property was at the time of said alleged returns by the register of wills, and the levy and assessment of each of said several taxes and for a period long anterior thereto and continuously since has been entirely outside of the State of Maryland; that the said William Woodward Baldwin is and continuously since the year 1889, has been a citizen of the State of New York, resident outside of the State of Maryland, and a non-resident of the State of Maryland, and was a non-resident of the State of Maryland and a resident of the State of New York at the time of his appointment and at the time of his qualification as guardian for the said Columbus C. Baldwin; that the said Columbus C. Baldwin is and continuously since the appointment of the said William Woodward Baldwin as his guardian as alleged has been, and always was a citizen of the State of New York, resident outside of the State of Maryland, and a non-resident of the State of Maryland; and that the alleged taxes were not properly nor lawfully levied nor assessed and the said property was not liable to taxation within or by the State of Maryland nor in or by any county thereof.

14 And for a twelfth plea, these defendants say:

XII. That both the State of Maryland and the county of Washington were entirely without authority or jurisdiction to levy or assess the alleged taxes.

And for a thirteenth plea, these defendants say:

XIII. That the law of the State of Maryland, whereby and whereunder the said alleged taxes were levied and assessed is unconstitutional and void and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States and abridges

the privileges and immunities of citizens of the United States, to wit, the privileges and immunities of these defendants and of William Woodward Baldwin and of the said Columbus Calvert Baldwin, and of each of them severally, citizens of the United States.

And for a fourteenth plea, these defendants say:

XIV. That the law of the State of Maryland, whereby and whereunder the said alleged taxes were levied and assessed is unconstitutional and void and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States, and deprives the defendants and the said William Woodward Baldwin and Columbus Calvert Baldwin severally, citizens of the United States, and within its jurisdiction and each of them, of property without due process of law.

And for a fifteenth plea, these defendants say:

XV. That the law of the State of Maryland, whereby and whereunder the said alleged taxes were levied and assessed is unconstitutional and void and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States, and denies to the defendants and to William Woodward Baldwin and Columbus Calvert Baldwin, and to each of them within the jurisdiction of the State of Maryland the equal protection of the laws.

And for a sixteenth plea, these defendants say:

XVI. That the law of the State of Maryland, whereby and whereunder the said alleged returns of the register of wills of Washington county aforesaid were directed to be made and were made is unconstitutional and void, and is contrary to and a violation of article IV, section 2, of the Constitution of the United States, and denies to William Woodward Baldwin and Columbus Calvert Baldwin, and each of them, citizens of the United States, and of the State of New York, the privileges and immunities of citizens of the State of Maryland.

And for a seventeenth plea, these defendants say:

XVII. That the law of the State of Maryland, whereby and
15 whereunder the said alleged returns of the register of wills of Washington county aforesaid were directed to be made and were made is unconstitutional and void, and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States, and deprives the defendants, and each of them, and the said William Woodward Baldwin and Columbus Calvert Baldwin, severally, citizens of the United States, and within its jurisdiction, of property without due process of law.

And for an eighteenth plea, these defendants say:

XVIII. That the property returned by the register of wills of Washington county, as liable to taxation within Washington county, in each of the said several annual returns for the years 1893, 1894 and 1895, was not in the hands of the said William Woodward Baldwin as guardian, and that the said returns of the said register of wills, are in nowise binding upon these defendants, nor upon the said William Woodward Baldwin.

And for a twentieth plea, these defendants say:

XX. That the said Columbus C. Baldwin, arrived at full age

prior to any of the alleged returns of the register of wills aforesaid, and prior to the alleged levy and assessment of any of said alleged taxes, to wit, on the 6th day of January, 1893, and thereupon said William Woodward Baldwin, as his guardian, delivered up to the said Columbus C. Baldwin, agreeably to the directions of law all the property and estate of the said Columbus C. Baldwin under his care; and the said Wm. W. Baldwin, did at all times prior to said delivery, faithfully account with the orphans' court of Washington county, as directed by law for the management of the property and estate of the said Columbus C. Baldwin, and did in all respects perform the duty of guardian to the said Columbus C. Baldwin according to law.

And for a twenty-first plea, these defendants say:

XXI. That before this suit the said Columbus C. Baldwin, being of the full age of twenty-one years, did accept and receive from the said William Woodward Baldwin, in full satisfaction and discharge of the said William Woodward Baldwin, as guardian to the said Columbus C. Baldwin, all the property and estate of the said Columbus C. Baldwin under his care.

And for a twenty-second plea, these defendants say:

XXII. That before this suit the said Columbus C. Baldwin being of the full age of twenty-one years, did, by an instrument, under his seal and delivered to the said William Woodward Baldwin, fully release and discharge the said William Woodward Baldwin from all liability as guardian to the said Columbus C. Baldwin.

16 And for a twenty-third plea, these defendants say:

XXIII. That before this suit the said William Woodward Baldwin did faithfully account with the orphans' court of Washington county, as directed by law, for the management of the property and estate of the said Columbus C. Baldwin, and the said Columbus C. Baldwin having, prior to the said alleged returns of the register of wills, and prior to the alleged levy and assessment of said alleged taxes, arrived at the full age of twenty-one years, said William Woodward Baldwin did exhibit a final account to the said orphans' court and did deliver up agreeably to the said court's order to the said Columbus C. Baldwin, all the property of said Columbus C. Baldwin in his hands, including bonds and other securities.

And for a twenty-fourth plea, these defendants say:

XXIV. That before this suit the orphans' court of Washington county did, after arrival of the said Columbus C. Baldwin at the full age of twenty-one years, and on the exhibition of the final account of the said William Woodward Baldwin, pass its final order marking the account of said William Woodward Baldwin final, and closing the said estate.

And for a twenty-fifth plea, these defendants say:

XXV. That before this suit the said Columbus C. Baldwin being of the full age of twenty-one years, did, by an instrument under his seal and duly delivered, fully and completely release and discharge

these defendants from all manner of action and actions, cause and causes of action whatsoever.

And for a twenty-sixth plea, these defendants say:

That the alleged cause of action did not accrue within one year before this suit.

CHARTES G. BALDWIN,
Att'y for Def'ts.

Additional Plea No. 27.

(Filed October 27th, 1898.)

In pursuance of leave granted the defendants in the above-entitled cause, amend their pleas by the addition of the following plea:

And the defendants for 27 plea say:

That the alleged deed is not their deed.

17 STATE OF MARYLAND, }
City of Baltimore. }

William Henry Baldwin, Jr., and Summerfield Baldwin (the defendants in the cause), made oath and say that the plea hereunto annexed is true in substance and in fact.

Sworn to before—
[SEAL OF J. P.] SAMUEL AFFELDER, *J. P.*

The plaintiff joined issue to the 20th, 23d and 27th pleas of the defendants, and demurred to the 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 21st, 22d, 24th, 25th and 26th pleas.

The several demurrers of the plaintiff were sustained with leave to the defendants to plead over, whereupon the defendants filed the following additional pleas:

Additional Pleas Nos. 1 to 23.

(Filed 19th December, 1898.)

And the said defendants, William Henry Baldwin, Jr., and Summerfield Baldwin, by William W. Baldwin and Charles A. Boston and Charles G. Baldwin, their attorneys, after leave to plead over to the plaintiff's declaration granted, for additional plea to the declaration of the plaintiff herein say:

That the said D. Frank Hull is not entitled to receive or collect any State or county taxes whatsoever levied or assessed by law upon any property real or personal whatsoever, taxable within the county of Washington, in or during any one or more of the years 1893, 1894 and 1895.

And for a fourth additional plea the defendants say:

That no taxes whatsoever were duly or properly levied or assessed for the year 1893, or the year 1894, or the year 1895, as alleged.

And for an eleventh additional plea to so much of the plaintiff's declaration as refers to county taxes for 1893 the defendants say:

That the county taxes alleged to have been levied and assessed for the year 1893 were not levied nor assessed within four years before this suit, and that these defendants plead section 83 in article 81 of the Public General Laws of Maryland in bar of any recovery for said county taxes.

And for a fifteenth additional plea the defendants say:

That the said Columbus C. Baldwin arrived at full age on the sixth of January, 1893, prior to any of the alleged returns of the register of wills aforesaid, and prior to the alleged levy and assessment of any of said alleged taxes, and thereupon said
18 William Woodward Baldwin offered to deliver up to said Columbus C. Baldwin all the property and estate of the said Columbus C. Baldwin, but that by an agreement between the said Wm. Woodward Baldwin and the said Columbus C. Baldwin, to which agreement these defendants were in no way parties, the said Columbus C. Baldwin, being of full age, declined to accept his property into his manual possession, and the said William Woodward Baldwin agreed to retain and continue the custody of the same until such a time as the said Columbus C. Baldwin should elect to take the possession thereof, and that prior to this suit the said Columbus C. Baldwin has taken possession thereof.

And for a seventeenth additional plea the defendants say:

That the said Columbus C. Baldwin arrived at full age on the sixth day of January, 1893, prior to any of the alleged returns of the register of wills aforesaid, and prior to the alleged levy and assessment of any of said alleged taxes, and thereupon said William Woodward Baldwin delivered up to said Columbus Calvert Baldwin all the property and estate of the said Columbus Calvert Baldwin.

And for an eighteenth additional plea the defendants say:

That the said property alleged to have been returned by the register of wills, as liable to taxation within his said county, was not liable to taxation within said county; that said property was, at the time of said alleged returns by the register of wills and the levy and assessment of each of said several taxes, and for a period long anterior thereto and continuously since, has been entirely outside of the State of Maryland; that the said William Woodward Baldwin is and continuously since the year 1889, has been a citizen of the State of New York, resident outside of the State of Maryland, and a non-resident of the State of Maryland, and was a non-resident of the State of Maryland, and a resident of the State of New York at the time of his appointment, and at the time of his qualification as guardian for the said Columbus Calvert Baldwin; that the said Columbus Calvert Baldwin is and continuously since the appointment of the said William Woodward Baldwin, as his guardian, as alleged, has been and always was a citizen of the State of New York, resident outside of the State of Maryland and a non-resident of the State of Maryland.

And for a nineteenth additional plea the defendants say:

That William Woodward Baldwin and Columbus Calvert Baldwin, and each of the defendants, severally, are and at all times since 1891, and prior thereto, continuously, have been citizens of the United States, and that these defendants rely upon the fourteenth amendment of the United States Constitution for their protection, and allege that the law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed is unconstitutional and void, and is contrary to and a violation of the fourteenth amendment of the Constitution of the United States, and abridges the privileges and the immunities of the citizens of the United States.

19 And for a nineteenth additional plea the defendants say:

That William Woodward Baldwin and Columbus Calvert Baldwin, and each of these defendants severally are, and at all times since 1891 and prior thereto, continuously have been citizens of the United States, and that these defendants rely upon the fourteenth amendment of the United States Constitution for their protection, and allege that the law of the State of Maryland, whereby and whereunder the said alleged taxes were levied and assessed is unconstitutional and void, and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States, and deprives the defendants and the said William Woodward Baldwin and Columbus Calvert Baldwin, and each of them, within the jurisdiction of the State of Maryland of property without due process of law.

And for a twenty-first additional plea the defendants say:

That these defendants rely upon the fourteenth amendment of the United States Constitution for their protection, and allege that the law of the State of Maryland, whereby and whereunder the said alleged taxes were levied and assessed, is unconstitutional and void, and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States, and denies to the defendants and to William Woodward Baldwin and to Columbus Calvert Baldwin, and to each of them, within the jurisdiction of the State of Maryland the equal protection of the laws.

And for a twenty-second additional plea the defendants say:

That William Woodward Baldwin and Columbus Calvert Baldwin and each of these defendants severally are, and at all times since 1891 and prior thereto, continuously have been severally citizens of the United States, and that the said William Woodward Baldwin and Columbus Calvert Baldwin, and each of them, is and at all times continuously since 1891 and prior thereto, has been a citizen and resident of the State of New York, and that these defendants rely upon article four, section two of the Constitution of the United States for their protection, and allege that the law of the State of Maryland, whereby and whereunder the said alleged returns of the register of wills of Washington county aforesaid, were directed to be made and were made, is unconstitutional and void, and is contrary to and in violation of article four, section two of the Constitution of the United States, and denies to William Baldwin and to Columbus

Calvert Baldwin, and each of them, citizens of the United States, and of the State of New York aforesaid, the privileges and immunities of the citizens of the State of Maryland.

And for a twenty-third additional plea the defendants say:

That William Woodward Baldwin and Columbus Calvert Baldwin and each of the defendants is, and at all times since 1891 and prior thereto, continuously have been severally citizens of the United States and within its jurisdiction, and that the defendants rely upon the fourteenth amendment to the Constitution of the United States for their protection, and allege that the law of the State of Maryland, whereby and whereunder the said alleged returns of the registers of wills of Washington county aforesaid, were directed to be made and were made, is unconstitutional and void, and is contrary to and a violation of the fourteenth amendment to the Constitution of the United States, and deprives the defendants, and each of them, and the said William Woodward Baldwin and the said Columbus Calvert Baldwin, severally citizens of the United States, and within its jurisdiction as aforesaid, of property without due process of law.

WILLIAM WOODWARD BALDWIN.
CHARLES A. BOSTON.

Plaintiff then joined issue on the 4th and 17th additional pleas of the defendants, and moved to strike from the record the defendants' 1st, 11th, 18th, 19th, 20th, 21st, 22d and 23d so-called additional pleas:

First. Because the great majority of said pleas were of a trifling and frivolous nature, and because in entire disregard of the opinion of this court sustaining the plaintiff's demurrer to the original pleas, they sought to reopen questions already decided in this case.

Second. Because, almost without exception, they are bad in substance, are argumentative and the great majority conclude by tendering issues of law.

Third. Because they still further increased the already unnecessarily great confusion and prolixity, arising from multiplying the issues of the case, when the real points at issue were few and simple in their nature.

And the plaintiff demurred to the 15th additional plea of the defendants.

The court sustained the plaintiff's motion to strike out the several pleas of the defendants above enumerated, and sustained the plaintiff's demurrer to the 15th additional plea of the defendants.

Docket Entries.

March 16th, 1899.—Case tried before Hon. J. Upshur Dennis, judge at large, without a jury; same day, verdict for plaintiff for $1,446.12; same day, motion by defendants in arrest of judgment; same day, motion overruled; same day, judgment on verdict.

21 *Defendants' Order for Appeal.*

Filed March 20th, 1899.

Mr. Clerk:

Please enter an appeal to the court of appeals of Maryland from the judgment rendered in the above-entitled case.

CHARLES G. BALDWIN,
Attorney for the Defendants.

At the time of filing the aforegoing order for appeal, the defendants also filed an affidavit that the appeal is not taken for delay, and also filed a writing obligatory commonly called an appeal bond which was duly approved.

Defendants' Bill of Exceptions.

(Filed 28th March, 1899.)

The plaintiff to sustain the issues on his part joined, offered in evidence the following agreement and exhibits:

For the purposes of this action, it is agreed that the record herewith filed as "Exhibit No. 1," is a duly certified copy of the record of the proceedings in the case entitled William Woodward Baldwin, guardian, *vs.* The County Commissioners of Washington County and D. Frank Hull, collector, and that the agreed statement of facts therein is true; and that the bond herewith filed as "Exhibit No. 2," is a duly certified copy of the bond filed by William Woodward Baldwin, guardian of Columbus Calvert Baldwin, in the orphans' court of Washington county, in the matter of the guardianship of the said Columbus Calvert Baldwin.

It is further agreed, that the declaration correctly states the amounts of the several returns of the register of wills of Washington county to the county commissioners of Washington county for the several years mentioned in the declaration in this case, and that the said register of wills returned such amounts as appearing by the records of said orphans' court, to wit, by accounts Nos. 1 and 2 of William Woodward Baldwin, mentioned in said Exhibit No. 1, to be in the hands of said guardian, and that the several sums mentioned below were levied and assessed by the county commissioners aforesaid, to the said William Woodward Baldwin, guardian, upon the amounts of the several returns of the said register of wills for the years in question for State and county taxes, to wit: The amount of State taxes levied and assessed as aforesaid, for the said several years, was for 1893, $79.63; for 1894, $79.63; for 1895, $79.63; the amounts of county taxes levied and assessed as aforesaid, for said several years, was for 1893, $314; for 1894, $336.42; for 1895, $327.45; that interest runs on such of said several sums as may be held to be recoverable herein, from the first day of January of each year following the said several levies.

22 It is further agreed that the said several sums and interest therein claimed to be due the plaintiff for taxes, as above set forth, are as yet unpaid in whole or in part.

It is further agreed that at all the times mentioned in the declaration and at the time of the appointment of said William Woodward Baldwin as guardian as aforesaid, and continuously since his said appointment, and at the present time the said William Woodward Baldwin and the said Columbus Calvert Baldwin have been citizens and residents of the State of New York, and of the United States and non-residents of the State of Maryland.

The bonds and certificates of stock embraced in the said register's returns were physically in the State of New York, and wholly without the State of Maryland at the times of the said several returns and of the said several levies and assessments, and continuously from a time long anterior to the first of said returns.

And the whole of said estate included in the returns of the said register for the years mentioned in the said declaration, consisted of stocks and bonds as aforesaid physically in the State of New York without the State of Maryland.

On the 26th day of May, 1896, the said William Woodward Baldwin stated a final account with said Columbus C. Baldwin in said orphans' court, and delivered the whole of said property to said Columbus C. Baldwin, and filed in said court a full receipt and release under seal, for the whole of said estate from said Columbus C. Baldwin to said William Woodward Baldwin, and an order of the said orphans' court was passed thereupon marking said account final and closing the estate.

Columbus C. Baldwin upon his arrival at age, and until the final accounting aforesaid, desired William Woodward Baldwin to continue to collect the income from his said estate and to manage the securities in his said estate, and had full knowledge thereof, and it was at the request of the said Columbus C. Baldwin and by agreement between said Columbus C. Baldwin and said William Woodward Baldwin that said collections and management continued.

On the 19th day of July, 1897, the said Columbus C. Baldwin executed and delivered a full and complete release and discharge under seal to the defendants in this action.

D. Frank Hull was duly appointed collector of State and county taxes with the lawful power and authority of a collector of State and county taxes, for the year 1893, and duly qualified as such collector; he was reappointed and again duly qualified for the years 1894 and 1895; his successor in office, a different individual, was appointed and qualified in 1896, and D. Frank Hull has received no appointment as collector aforesaid since 1895.

23 It is finally agreed that the above-entitled case shall be tried by the court without a jury upon the foregoing agreed statement of facts, and the agreed statement of facts in said Exhibit No. 1, and upon said Exhibits No. 1 and No. 2, which shall be subject to the usual exceptions as to their relevancy or the relevancy of any part thereof to the issues joined; and that the court shall have power to enter up judgment in conformity with its

findings of the law upon the pleadings in this case and the facts agreed upon.

Each party completely reserves the right to review such judgment or any ruling or determination therein in the court of appeals of Maryland, and in the Supreme Court of the United States, in accordance with law.

CHARLES MARSHALL & SONS,
Att'ys for Plaintiff.

CHARLES A. BOSTON,
CHARLES G. BALDWIN,
Att'ys for Def's.

"EXHIBIT No. 2."

MARYLAND, *ss:*

Know all men by these presents, that we, Wm. Woodward Baldwin, Summerfield Baldwin, William H. Baldwin, Jr., and Christopher C. Baldwin, are held and firmly bound unto the State of Maryland in the full and just sum of one hundred thousand ($100,00–) dollars to be paid to the State of Maryland aforesaid, to which payment well and truly to be made and done, we bind ourselves and every of us, our, and every of our heirs, executors and administrators in the whole, and for the whole, jointly and severally firmly by these presents.

Sealed with our seals, dated this fifteenth day of August, in the year of our Lord eighteen hundred and ninety-one.

Now the condition of the obligation is such, that if the above-bounded Wm. Woodward Baldwin, as guardian to Columbus C. Baldwin, of the city of New York, orphan child of Sallie R. Baldwin, deceased, shall faithfully account with the orphans' court of Washington county, as directed by law, for the management of the property and estate of the orphan under his care, and shall also deliver up the said property agreeably to the order of said court, or the directions of law, and shall in all respects perform the duty of guardian to the said Columbus C. Baldwin, according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue in law.

WM. WOODWARD BALDWIN. [SEAL.]
WM. H. BALDWIN, JR. [SEAL.]
SUMMERFIELD BALDWIN. [SEAL.]
C. C. BALDWIN. [SEAL.]

Signed, sealed and delivered in presence of—

FRANK G. BALDWIN.

24 BALTIMORE CITY, *sct:*

I hereby certify that the within bond is deemed by the judges of the orphans' court for Baltimore city to be good and sufficient for the amount of the penalty named therein.

In testimony whereof, I hereunto subscribe my name
[SEAL.] and affix the seal of my office, this 19th day of August, in the year of our Lord eighteen hundred and ninety-one.

ROBERT T. BANKS.

STATE OF MARYLAND, *Washington County,* } *To wit:*

I, Thomas E. Hilliard, register of wills for Washington county, do hereby certify that the aforegoing is a true copy of the bond filed in the orphans' court of said county by William Woodward Baldwin, guardian to Columbus C. Baldwin, taken from the original thereof now of record and on file in my office.

In testimony whereof, I hereunto sign my name and
[SEAL.] affix the seal of the orphans' court of Washington county, this 10th day of November, A. D. 1897.

THOS. E. HILLIARD,
Register of Wills for Washington County.

The defendants excepted to the admission of Exhibit No. 1, except as to so much thereof, designated by the heading "statement of facts," for the following reasons:

Because it is incompetent, immaterial and irrelevant in that it does not purport to be and is not a suit between the parties to this suit, and it does not avail the plaintiff in this action as tending to prove any fact now in issue, and that the judgment in said suit is not an adjudication of any fact nor of any right in controversy in this suit; and that the defendants were not nor were either of them parties to said suit.

And that it does not appear that the defendants were represented in said suit; or that they had an opportunity to be represented therein.

And that the issues therein were not identical in any respect with the issues in this suit, nor were any of them.

Which objection was overruled by the court. To which overruling of the objection of the defendants by the court and
25 the admission of which exhibit the defendants then and there excepted and prayed the court to sign this *its* first bill of exceptions; which is accordingly done this sixteenth day of March, 1899.

J. UPSHUR DENNIS.

After offering the agreements and exhibits set out in the foregoing bill of exceptions, which are hereby made a part hereof, and the signing of the defendants' first bill of exceptions, the defendants objected to the admission of Exhibit No. 2, as irrelevant to the issues joined, which objection was overruled by the court.

To which overruling of the objections of the defendant- by the court and the admission of which exhibit the defendants then and there excepted, and prayed the court to sign this *its* second bill of exceptions; which is accordingly done this sixteenth day of March, 1899.

J. UPSHUR DENNIS.

After offering the agreement and exhibits set out in the foregoing bills of exceptions which are hereby made a part hereof, and after signing the defendants' second bill of exceptions, the defendants objected to the admission of so much of the said agreement and exhibits as tended to prove the return of the register of wills upon the following grounds:

The defendants object to the introduction of any evidence of the return of the register of wills, or any of them, for 1893, 1894 and 1895, as incompetent, irrelevant and immaterial.

Because it appears from the other evidence in the suit that such returns were each and all made after the arrival of Columbus C. Baldwin at full age, and because it appears from the evidence offered with reference thereto, that such returns are merely of such amounts as appeared by the records of the orphans' court, to be in the hands of the guardian; that the first of said records antedated the arrival of said ward at full age and could not properly be used against these defendants subsequent to the arrival of the ward at full age, as the basis of a tax or taxes, to be imposed upon the property of Columbus C. Baldwin after his arrival at full age;

And because the account No. 2 of William Woodward Baldwin appears by the evidence offered in relation thereto not to have been filed until February 15th, 1895, and no tax for 1893 or 1894 could have been predicated thereon, and because such last-mentioned account was filed more than two years after the arrival of Columbus C. Baldwin at full age, and such act of Wm. Woodward Baldwin, at such date, is not efficient to impose any liability upon the
26 defendants as his bondsmen, which was not an existing duty of such guardian on the day of the arrival of his ward at full age;

And because it does not appear from the evidence offered or otherwise that the said Wm. Woodward Baldwin, or the said Columbus C. Baldwin, or the defendants, or any of them, had any opportunity to be heard prior to or upon such returns or any of them, as to the actual amount of property or its value, in the hands of Wm. Woodward Baldwin, as guardian or otherwise, liable to taxation, and that such action of the register of wills was entirely arbitrary;

And because the law of the State of Maryland, whereby such returns were required to be made and were made, is a violation of the Constitution of the United States, in each of the following particulars:

1st. It violates article IV, section 2, of said Constitution, because it denies, and at all times denied to Wm. Woodward Baldwin and Columbus C. Baldwin, and to each of them, who, as shown by the evidence, are and at all times were citizens of the United States, and of the State of New York, the privileges and immunities of the citizens of the State of Maryland, inasmuch as the property of the citizens of the State of Maryland is taxable only in the county where it is located, or of the residence of its owner and not elsewhere, and that the law requiring such returns of property as liable to taxation in Washington county, regardless of the location of the property outside of the county of Washington, and of the residence of its

owner outside of said county, discriminates against said citizens of the State of New York.

2d. It violates the 14th amendment of said Constitution, because it deprives and at all times deprived the defendants and each of them and the said Wm. Woodward Baldwin and the said Columbus C. Baldwin, all of whom are shown to have been at all times citizens of the United States and within its jurisdiction, of property without due process of law; inasmuch as such returns are each and all required by said law to be entirely arbitrary, and no opportunity whatsoever is afforded by such law for any hearing whatsoever as to whether such property so returned as liable to taxation within the county of such register of wills is liable to taxation at the time of such returns, or as to whether the value so returned is the value of such property in fact.

That such law is consequently void, and that all returns thereunder are of no effect.

But the court overruled the objection.

To which overruling of the objection of the defendants by the court and the admission of which agreement as to so much thereof as admitted or tended to show the return aforesaid the defendants then and there excepted and prayed the court to sign this *its* third bill of exceptions; which is accordingly done this sixteenth day of March, 1899.

J. UPSHUR DENNIS.

27 And after the offering of the agreement and Exhibits Nos. 1 and 2, set forth and referred to in the foregoing bill of exceptions, which are hereby made a part hereof, and after signing the defendants' third bill of exceptions, the defendants objected to the admission of so much of the foregoing agreement and exhibits as tended to prove any levy or assessment upon the following grounds:

The defendants object to the admission in evidence of any testimony tending to prove the levy or assessment of taxes, as incompetent,, irrelevant, and immaterial, because it already appears from the undisputed facts in evidence, that each and all of said levies and assessments were made after the arrival of Columbus Calvert Baldwin at full age.

Because it appears from the agreed statement of facts, that such levies and assessments were based upon the several returns of the register of wills, to which objection has already been made, and which returns, for the reasons already stated at length, were of no effect, as against these defendants or either of them;

And because the law providing for each such levy and assessment violates the Constitution of the United States in each of the following particulars:

1st. It violates the 14th amendment of the United States Constitution, because it abridges the privileges and immunities of citizens of the United States.

2d. It violates the 14th amendment of said Constitution, because it deprives the defendants and Columbus Calvert Baldwin and Wm.

Woodward Baldwin, and each of them, of property without due process of law.

3d. It violates the 14th amendment of said Constitution, because it denies to the defendants and to Wm. Woodward Baldwin and Columbus C. Baldwin, and to each of them, within the jurisdiction of the State of Maryland, of the equal protection of its laws.

That said law is therefore void, and all taxes levied and imposed thereunder on the property of Columbus C. Baldwin, or on such property in the hands of Wm. Woodward Baldwin, as his guardian, are null and void.

Which objection was overruled by the court.

To the overruling of this objection of the defendants and the admission of so much of said agreement and exhibits as referred to any levy and assessment aforesaid, the defendants then and there excepted and prayed the court to sign this *its* fourth bill of exceptions; which is accordingly done this sixteenth day of March, 1899.

J. UPSHUR DENNIS.

28 At the conclusion of the offering of the above agreement and Exhibits Nos. 1 and 2, set forth in the foregoing bills of exception, which are hereby made a part hereof, the parties having rested their cases thereupon, the plaintiff offered one prayer, as follows:

The plaintiff prays that the court find as a matter of law upon the agreed statement of facts and exhibits filed therewith that the plaintiff is entitled to recover from the defendants the sum of $1,446.12.—(Granted.)

And the defendants offered the following prayers:

Defendants' First Prayer.

The defendants pray the court to declare to itself sitting as a jury:

That under the pleadings and evidence in this case, there is no evidence legally sufficient to entitled the plaintiff to recover, and that the verdict must be for the defendants.—(Rejected.)

Defendants' Second Prayer.

That there is in this case no legally sufficient evidence whereby the court, sitting as a jury, can find that D. Frank Hull, collector of State and county taxes for Washington county, in the State of Maryland, for the years 1893, 1894, and 1895, or any of them, has at any time complied with sections 38 and 40 of article 26 of the Code of Public General Laws of Maryland, or either of them.—(Rejected.)

Defendants' Third Prayer.

That there is in this case no legally sufficient evidence whereby the court, sitting as a jury, can find that the plaintiff has suffered any loss or damage by any acts or omissions of these defendants, or of the said William Woodward Baldwin.—(Rejected.)

Defendants' Fourth Prayer.

That there is in this case no legally sufficient evidence whereby the court, sitting as a jury, can find that the defendants were parties to an agreement between Columbus C. Baldwin and Wm. Woodward Baldwin.—(Rejected.)

Defendants' Fifth Prayer.

That if it shall find that before the commencement of this action, and on the 26th day of May, 1896, the said William Woodward Baldwin stated a final account with said Columbus Calvert Baldwin in the orphans' court of Washington county, the county of his appointment, and delivered the whole of the said property to said Columbus Calvert Baldwin, and filed in said court a full receipt and release under seal for the whole of said estate from said Columbus Calvert Baldwin to said William Woodward Bald-
29 win, and an order of said orphans' court was passed thereupon, making said account final and closing the estate, then the verdict must be for the defendants.—(Rejected.)

Defendants' Sixth Prayer.

That the plaintiff is not entitled to recover in this action any taxes due for any of the years 1893, 1894 or 1895, except for those years, if any, for which the court sitting as a jury shall find that the circuit court for Washington county did, on petition in writing, made an order in writing passed during the year next succeeding any such year for the collection of taxes for such year or years, extending the time for the plaintiff for the collection of the taxes for such year or years, and that the extension so granted has not yet expired.—(Rejected.)

Defendants' Seventh Prayer.

That the plaintiff is not entitled to recover in this action any taxes or any damages based on any taxes, which the court may believe were levied and assessed after the date which the court may find that the ward, Columbus C. Baldwin, had reached majority—provided the court sitting as a jury should find that said ward has attained his majority.—(Rejected.)

Defendants' Eighth Prayer.

If the court, sitting as a jury, shall find that before the commencement of this action Columbus C. Baldwin, after his arrival at full age, executed a full and complete release and discharge under seal to the defendants in this action, and that the said Columbus C. Baldwin was the ward named in the defendants' writing obligatory introduced into evidence, and that such writing obligatory was the deed of defendants, then the plaintiff cannot recover from the defendants.—(Rejected.)

Defendants' Ninth Prayer.

If the court, sitting as a jury, shall find from the evidence that by agreement with Columbus C. Baldwin, after his arrival at full age, Wm. Woodward Baldwin continued the collection of income and the management of the estate of Columbus C. Baldwin, and postponed upon his final accounting until May 26, 1896, and that the defendants were not parties to such agreement, then the liability of the defendants for taxes, or the amount thereof, could not be increased or prolonged by such agreement, and that the defendants were, by the aforesaid agreement, discharged as sureties on the bonds of Wm. Woodward Baldwin, and the plaintiff cannot recover from the defendants any of the taxes levied upon the property of the said Columbus C. Baldwin in the hands of the said Wm. Woodward Baldwin, subsequent to the arrival of the said Columbus C. Baldwin at full age.—(Rejected.)

30 *Defendants' Tenth Prayer.*

If the court, sitting as a jury, shall find from the evidence that at all times mentioned in the declaration, and at the time of the appointment of Wm. Woodward Baldwin as guardian for Columbus C. Baldwin, and continuously since his said appointment, the said Wm. Woodward Baldwin and the said Columbus C. Baldwin were and have each been residents of the State of New York, and of the United States and non-residents of the State of Maryland, and that the whole of said estate embraced in the register's returns, upon which taxes for the years 1893, 1894 and 1895 were levied and assessed, were physically in the State of New York and wholly without the State of Maryland at the times of the several returns and of the said levies and assessments, and continuously from a time long anterior from the first of said returns, and that the property and estate so returned by said register consisted wholly of said stocks and bonds, and that said stocks and bonds were entirely the stocks and bonds of corporations, organized and located outside of the State of Maryland, and that said Columbus C. Baldwin had arrived at full age on January 6th, 1893, and that the State and county taxes aforesaid were levied and assessed as aforesaid, subsequent to the arrival of the said Columbus C. Baldwin at full age as aforesaid, then the plaintiff cannot recover from the defendants the said taxes nor any of them, nor the amount thereof.—(Rejected.)

Defendants' Eleventh Prayer.

If the court, sitting as a jury, shall find from the evidence the facts as stated in the fifth prayer, then the law of the State of Maryland, under which the said several taxes were levied and assessed, violates the 14th amendment of the Constitution of the United States, and abridges the privileges and immunities of citizens of the United States, and that the plaintiff cannot recover from the defendants any of the said taxes, nor the amount thereof.—(Rejected.)

Defendants' Twelfth Prayer.

If the court, sitting as a jury, shall find from the evidence the facts stated in the fifth prayer, then the law of the State of Maryland, under which the said several taxes were levied and assessed, violates the 14th amendment of the Constitution of the United States, and deprives the defendants and Wm. Woodward Baldwin and Columbus C. Baldwin, and each of them, within the jurisdiction of the State of Maryland, of property, without due process of law.—(Rejected.)

Defendants' Thirteenth Prayer.

If the court, sitting as a jury, shall find from the evidence the facts as stated in the fifth prayer, then the law of the State of Maryland, under which said several taxes were levied and assessed, violates the 14th amendment of the Constitution of the United States, and denies to the defendants and to Wm. Woodward
31 Baldwin and to Columbus C. Baldwin, and to each of them, within the jurisdiction of the State of Maryland, the equal protection of the laws, and the plaintiff cannot recover from the defendants any of the said taxes nor the amount thereof.—(Rejected.)

Defendants' Fourteenth Prayer.

If the court, sitting as a jury, shall find from the evidence the facts as stated in the fifth prayer, then the law of the State of Maryland, under and by virtue of which the said register of wills made his said returns, violates article IV, section 2, of the Constitution of the United States, and denies to Wm. Woodward Baldwin and to Columbus C. Baldwin, and each of them, citizens of the United States, and of the State of New York, the privileges and immunities of citizens of the State of Maryland, and the plaintiff cannot recover from the defendants any of said taxes nor the amount thereof.—(Rejected.)

Defendants' Fifteenth Prayer.

If the court, sitting as a jury, shall find from the evidence the facts as stated in the fifth prayer, then the law of the State of Maryland, under and by virtue of which the register of wills made his said returns, violates the 14th amendment of the Constitution of the United States, and deprives the defendants and each of them and the said Wm. Woodward Baldwin and the said Columbus C. Baldwin, severally, citizens of the United States, and within its jurisdiction aforesaid, of property, without due process of law.—(Rejected.)

Upon the consideration of the prayers, the court granted the plaintiff's prayer and rejected the defendants' prayers.

To which granting of the plaintiff's prayer and rejection of the defendants' prayers the defendants excepted, and prays the court to sign this *its* fifth bill of exceptions; which is accordingly done this sixteenth day of March, 1899.

J. UPSHUR DENNIS,

It is agreed that the foregoing shall constitute the bills of exception in the above case, subject to the agreement of counsel filed herewith.

J. MARKHAM MARSHALL.
Att'y for Plaintiff.
CHARLES G. BALDWIN,
Att'y for Def's.

The defendants, by their counsel, Chas. A. Boston and Chas. G. Baldwin, move the court in arrest of judgment for error apparent upon the face of the record and not cured by the judgment herein, as follows:

32 1st. That the plaintiff has no capacity to sue the defendants upon their writing obligatory alleged in the complaint.

2d. That the plaintiff has no right of action against the defendant-.

3d. That the levy and assessment of taxes alleged in the declaration, and the several returns of the register of wills alleged in the declaration, were each nu*mm* and void and of no effect, for the reason that the law of the State of Maryland under which said taxes were levied and assessed, and under which said returns of the register of wills were severally made, violates the Constitution of the United States, as follows: the 14th amendment of said Constitution and article IV, section 2 of said Constitution, and the defendants specify such violations, as follows: The law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed, abridges the privileges and immunities of citizens of the United States, and deprives the defendants and Wm. Woodward Baldwin and Columbus C. Baldwin, and each of them, within the jurisdiction of the State of Maryland, of property, without due process of law, and denies to the defendants and to Wm. Woodward Baldwin and to Columbus C. Baldwin, and to each of them within the jurisdiction of the State of Maryland, the equal protection of the laws, and that the law of the State of Maryland whereby and whereunder the said alleged returns of the register of wills of Washington county were directed to be made, and were made denies to Wm. Woodward Baldwin and to Columbus C. Baldwin, and each of them, citizens of the United States, and of the State of New York, the privileges and immunities of the citizens of the State of Maryland, and deprives the defendants, and each of them, and the said Wm. Woodward Baldwin and the said Columbus C. Baldwin, severally, citizens of the United States, and within its jurisdiction, of property, without due process of law.

Agreement of Counsel.

(Filed March 28th, 1899.)

For the purposes of this case it is agreed that Exhibit No. 1, referred to in the agreed statement of facts, which is a part of the record in this case, is the record in the court of appeals of Maryland, in the cause of William W. Baldwin, guardian of Columbus C. Bald-

win, *vs.* The County Commissioners of Washington County, filed in said court of appeals June 22d, 1896, and argued in said court at the October term, 1896, and that in and by the court of appeals the said last-mentioned record may be referred to and made use of in this cause for all the purposes and in the same manner as if it were set forth in the record in this case as Exhibit No. 1; and in the event of either party suing out a writ of error to the court of appeals of Maryland, for the purpose of carrying the cause to the Supreme Court of the United States, the said record filed in the court
33 of appeals June 22d, 1896, shall be deemed to be a part of the record before the court of appeals, as if it were fully set forth in the record in this case as Exhibit No. 1, and a true copy thereof shall be returned to the Supreme Court of the United States by the clerk of the said court of appeals as a part of the record in this cause, as if it were fully set forth in the record in this case as Exhibit No. 1.

And it is further agreed that the clerk shall omit from the record pleas Nos. 1, 2, 3, 4, 9 and 19, and additional pleas Nos. 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 16, and the plaintiff's demurrer to such of said pleas as have been demurred to, and the plaintiff's joinder of issue to such of the above pleas as the plaintiff has joined issue upon, and the plaintiff's motion to strike out such of said pleas as the plaintiff has moved to strike out and the rulings of the court thereupon.

J. MARKHAM MARSHALL,
Att'y for Pl.
CHARLES G. BALDWIN,
Att'y for Def.

Appellants' costs...	$32 55
Appellee's costs.....	16 65

STATE OF MARYLAND, *City of Baltimore,* } *sct:*

I, Robert Ogle, clerk of the superior court of Baltimore city, do hereby certify that the aforegoing is truly taken from the record and proceedings of the said court, in the therein-entitled cause.

(Seal's Place.) In testimony whereof I hereunto set my hand and affix the seal of the superior court of Baltimore city aforesaid, on the 30th day of March, eighteen hundred and ninety-nine.

ROBERT OGLE,
Clerk Superior Court of Baltimore City.

34 *Agreement as to Record.*

(Filed April 10, 1899.)

In the Court of Appeals of Maryland.

WILLIAM HENRY BALDWIN, JR., and SUMMERFIELD BALDWIN, Appellants,
vs.
STATE OF MARYLAND, to the Use of D. FRANK HULL, Collector of State and Court Taxes for Washington County, Appellee.

Appeal from the superior court of Baltimore city.

It is agreed in this case that the defendant's 12th, 13th, 14th, 15th, and 16th prayers, as copied into the record, are incorrect copies, and that the word "eleventh" should be substituted for the word "fifth" in each of said prayers.

J. MARKHAM MARSHALL,
Attorney for Appellee.
CHARLES G. BALDWIN,
Attorney for Appellants.

35 This record is referred to in the agreement on page 13 of the printed record as Exhibit No. 1.

Record.

In the Court of Appeals of Maryland.

WILLIAM W. BALDWIN, Guardian of Columbus C. Baldwin,
vs.
THE COUNTY COMMISSIONERS OF WASHINGTON COUNTY, &c. } No. —.

Appeal from the circuit court for Washington county, equity.

Alex. Neill, for appellant.
Wm. Kealhofer, H'y Kyd Douglas, for appellee.

Filed June 22nd, 1896.

36 Appeal from the Circuit Court for Washington County.

Bill of Complaint.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guardian of Columbus C. Baldwin, Plaintiff,
vs.
THE COUNTY COMMISSIONERS OF WASHington County, D. Frank Hull, Collector, Defendants. } No. 4855. In Equity.

To the honorable the judges thereof:

The bill of complaint of William W. Baldwin, guardian of Columbus C. Baldwin, respectfully shows:

1st. That he was appointed guardian of the said Columbus C.

Baldwin by the orphans' court of Washington county, in the State of Maryland, on the 21st day of August, A. D. 1891, a certified copy of which letters are herewith filed, marked Exhibit No. 1, and which, with all other exhibits herewith filed may be taken, it is prayed, as part of this bill of complaint.

2nd. That the register of wills of said county, in his annual return of property liable to taxation for the year eighteen hundred and ninety-three, returned the sum of forty-four thousand eight hundred and fifty-six dollars as being in the hands of this plaintiff, and in his return for the year eighteen hundred and ninety-four returned the like sum of forty-four thousand eight hundred and fifty-six dollars as being in his hands—said returns having been made to the county commissioners of said county as property liable to taxation—and being part of the annual returns required by law to be made by said register to the said county commissioners.

3rd. That your orator is advised that the said county commissioners of Washington county aforesaid have placed said estate in the hands of your orator on the levy list of said county for the said years eighteen hundred and ninety-three and eighteen hundred and ninety-four, and have placed the same in the hands of D. Frank Hull, collector of State and county taxes for the said years eighteen hundred and ninety-three and eighteen hundred and ninety-four for collection, they having assessed said property for State and county taxes for said years. And the said collector has notified your orator that he intends to collect by process of law the amount of taxes on said assessments and levies against the said property.

37 4th. That your orator, as well as the said Columbus C. Baldwin, at and before the time of the said returns of said register and at and before the time of the levy and assessment thereon were non-residents of the State of Maryland, and both residing in the State of New York.

5th. That said property so levied upon and assessed was composed entirely of personalty, and no part thereof was within the State of Maryland.

6th. That said Columbus C. Baldwin was of full age on the 6th day of January, A. D. 1893, a period of time long anterior to both of said assessments and levies.

7th. That the attempt of said county commissioners and of the said D. Frank Hull, collector, to levy for and collect the said taxes is without warrant of law, and the same, if persisted in, will result in great and irreparable loss and injury to your orator and the said Columbus C. Baldwin.

8th. That by reason and on account of the said Columbus C. Baldwin as well as your orator being at the time and before the said returns of the register, and before the levy and assessment of said county commissioners, non-residents of the State of Maryland, the said property in the hands of your orator as aforesaid is exempt from taxation.

Wherefore your orator prays the following relief:

1st. That the said County Commissioners of Washington County

and the said D. Frank Hull, collector as aforesaid, and each of them, may be enjoined and restrained from enforcing the collection of the said taxes and from taking any further proceedings at law for the collection of the same.

2nd. And for such — or further relief as his case may require.

May it please your honors to grant unto your orator the writ of subpœna against the said County Commissioners of Washington County, and against the said D. Frank Hull, commanding them and each of them to be and appear in this court on some certain day to be therein named, to answer the premises and abide by and perform such decree as may be passed therein; and also the writ of injunction against the said County Commissioners of Washington County, and against the said D. Frank Hull, strictly prohibiting and restraining them and each of them from taking any — or further proceedings for the collection of said taxes from the said William W. Baldwin, guardian of Columbus C. Baldwin.

And as, &c.

ALEXANDER NEILL,
Sol. for Plaintiff.

STATE OF NEW YORK, }
County and City of New York. }

I hereby certify, that on this 7th day of February, A. D. 1895, before me, the subscriber, a notary public of the State of New York, in and for the county and city of New York, personally appeared William W. Baldwin, guardian of Columbus C. Baldwin, and
38 made oath in due form of law that the matters and things stated in the foregoing bill of complaint are true to the best of his knowledge and belief.

Sworn to before me this 7th day of February, 1895.

E. CAMBRELENG,
(Seal's place.) *Notary Public, N. Y. Co., No.* 268.

(Filed Feb'y 12th, 1895.)

Upon the foregoing bill of complaint and affidavit, it is, this 11th day of February, 1895, by the circuit court for Washington county, sitting as a court of equity, ordered that the County Commissioners of Washington County and D. Frank Hull show cause, on or before the 23rd day of February, 1895, why the writ of injunction should not issue as prayed in said bill of complaint; provided a copy of this order be served on the said D. Frank Hull on or before the 13th day of February, 1895.

EDWARD STAKE.

Copy of within order of court served on D. Frank Hull, collector.

CHAS. H. HERBERT, *Sheriff.*

(Filed Feb'y 12th, 1895.)

Summons issued for defendants and summoned.

Answer of Defendants.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guardian to Columbus C. Baldwin, *vs.* THE CO. COMMS. OF WASH. CO., D. FRANK Hull, Col.	No. 4855.	Equity.

The joint and several answers of the County Commissioners of Washington County and D. Frank Hull, collector of State and county taxes for the years 1893 and 1894, to the bill of complaint of William W. Baldwin, guardian to Columbus C. Baldwin, against them in this court exhibited.

These defendants admit the allegations set forth in the first, second, third and fourth paragraphs of the complainant's bill, but these defendants, further answering said paragraphs of said bill, say:

That in the year 1879 Christopher C. Baldwin, as acting guardian to Columbus C. Baldwin, settled an acting guardian's first account in the orphans' court of Washington county, and from that date down to the year 1883 settled divers accounts in the said court as guardian to the said Columbus C. Baldwin. That on the 1st day of August, 1884, Rigdon W. Baldwin was substituted in the place of the said Christopher C. Baldwin, as guardian to the said
39 Columbus C. Baldwin, and that as such guardian the said Rigdon W. Baldwin settled sundry accounts for his said ward in the orphans' court of Washington county down to the time of his death, which occurred some time in the year 1891; that on the 21st day of August, 1891, and after the death of the said Rigdon W. Baldwin, the orphans' court of Washington county granted letters to the complainant, William W. Baldwin, as guardian to the said Columbus C. Baldwin, and that since his appointment as such guardian the said William W. Baldwin, as such guardian, has settled two accounts in the said orphans' court of Washington county, the first of which was approved on the 23rd day of September, 1892, and the second on the 15th day of February, 1895, a day subsequent to the filing of the bill of complaint in this cause, and that the said second account is not a final account.

To the fifth paragraph, these defendants admit that the property assessed for the said taxes was personalty, but these defendants deny that under the facts set forth in the 1st and 2nd paragraphs of the bill of complaint, that "no part thereof was within the State of Maryland." And these defendants aver and maintain that, under the facts and circumstances detailed in said 1st and 2nd paragraphs of the bill of complaint, the *situs* of the personalty so returned by the register of wills is in Washington county, and that the same is liable to the taxes assessed thereon by the commissioners of Washington county.

To the sixth paragraph, these defendants cannot admit the matters therein alleged, that they know nothing as to the age of the said Columbus C. Baldwin.

To the seventh paragraph, these defendants deny that the attempt of the said D. Frank Hull, collector, to collect said taxes is without warrant of law, and deny the other allegations in said paragraph.

To the eighth paragraph, these defendants deny that under the facts and circumstances hereinabove detailed that the said property is exempt from taxation.

And these defendants further jointly and severally say, that the complainant, in and by his said bill of complaint has not shown that he has any just claim or demand in law or equity against these defendants or either of them, or to the relief prayed for. And they rely and insist upon this objection to said bill of complaint as if a demurrer had been separately filed thereto.

And these defendants, and each of them, pray that the said bill of complaint may be dismissed.

And as in duty, &c.

(Seal's place.) GEORGE C. SNYDER,
Pres. of the Board of County Coms. of W. Co.

Attest the seal of the Co. Coms. of W. Co.

Test: D. H. STALEY, *Cl'k.*

D. FRANK HULL,
Collector.

H. K. DOUGLAS AND
WM. KEALHOFER,
Sol's for Defendants.

40 STATE OF MARYLAND, *Washington County,* } *To wit:*

I hereby certify, that on this 19th day of February, A. D. 1895, before me, the subscriber, clerk of the circuit court for said county, personally appeared G. Carlton Snyder, president of the board of county commissioners of Washington county, and made oath in due form of law that the matters and things stated in the foregoing answer are true to the best of his knowledge and belief. And I do further certify, that at the same time and place also personally appeared D. Frank Hull, collector of State and county taxes for Washington county for the years 1893 and 1894, and did also make oath in due form of law that the matters and things set forth in the foregoing answer are true to the best of his knowledge and belief.

GEORGE B. OSWALD, *Clerk.*

(Filed Febr'y 19th, 1895.)

Statement of Facts.

In the Circuit Court for Washington County.

BALDWIN
vs.
Co. COMS. OF WASH. CO. and D. FRANK HULL. } No. 4855. Equity.

It is hereby agreed by and between the solicitors for the respective parties that the above-entitled cause shall be and the same is hereby set down for hearing on bill and answer and exhibit and the following statement of facts:

First. That Christopher C. Baldwin, the father of Columbus Calvert Baldwin, was appointed guardian to the said Columbus C. Baldwin on November 15th, 1879, and in his first account as "acting guardian" charged himself with a balance of $11,700.41 distributed from the estate of Jas. Dixon Roman, Jr., which was settled in the orphans' court of Washington county on January 16th, 1880, and on the same day settled an account as guardian, charging himself with a balance due his ward of $41,975.56, comprising the above item of $11,700.41, and the further sum of $32,285 44/100 devised from the estate of Louisa M. Roman, the grandmother of the ward, which was settled in the said court on January 16th, 1880; that subsequently thereto the said Christopher C. Baldwin, as guardian, settled accounts as follows: No. 2, April 4th, 1882, showing a balance of $46,737.47; No. 3, May 2nd, 1882, showing a net balance of $46,721.09; No. 4, April 15th, 1884, showing a net balance of $48,655.32; No. 5, April 15th, 1884, showing a balance of $49,340.09½. That Christopher C. Baldwin was then succeeded by Rigdon W. Baldwin, as guardian, who settled his first account Dec. 22, 1885, showing a net balance due his ward of $49,340.09, and subsequently thereto settled accounts Nos. 2, 3, 4, 5 and 6, a 7th account having been settled by his administrators January 19, 1892, showing a net balance due the ward of
41 $57,343.50, the said Rigdon W. Baldwin having died; that he was succeeded by William Woodward Baldwin, who was appointed guardian to the said Columbus Calvert Baldwin, August 21, 1891, and who since then settled in the said orphans' court as such guardian the following accounts: No. 1, approved Sept. 23, 1892, showing a balance due his ward, the said Columbus C. Baldwin, of $60,059.29; No. 2, approved February 15, 1895, showing a balance due ward of $63,881.56, and that no final account has been settled in said guardianship.

Second. That the said guardian and ward are both non-residents of the State of Maryland and residents of the city of New York, and were so at and before the returns of the register of wills and the imposition of the taxes, the collection of which is sought to be enjoined by these proceedings.

Third. That the said Columbus C. Baldwin was 21 years of age on the sixth day of January, 1893.

Fourth. That the register's returns to the county commissioners were made for the year 1893 on the first day of March, 1893, and for the year 1894 on the first day of March, 1894, and that the taxes for the years 1893 and 1894 were levied on the first days of June in each of said years.

Fifth. That Christopher C. Baldwin, Rigdon W. Baldwin and William W. Baldwin, as guardians to the said Columbus Calvert Baldwin, settled their several accounts in the orphans' court of Washington county at the several times mentioned above, and that the said William W. Baldwin settled his last account in said court prior to the filing of the bill in this cause on the 23rd day of September, 1892, but that said account was not a final account, and that the said trust has been continuously in the orphans' court of Washington county from the year 1879 down to and subsequent to the filing of the bill of complaint in this cause.

Sixth. That the property and estate consists of stocks and bonds of corporations organized and located outside of the State of Maryland, of the aggregate value of $44,856.00.

ALEXANDER NEILL,
Sol. for Plaintiff.
WM. KEALHOFER,
Of Counsel for D'f'ts.

(Filed March 20th, 1896.)

Agreement and Affidavits.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guardian of Columbus C. Baldwin,
vs.
THE COUNTY COMMISSIONERS OF WASHINGTON County, D. Frank Hull, Collector.
} No. 4855. Equity.

42 It is agreed by and between the solicitors for the plaintiff and defendants, that the affidavits of William W. Baldwin and Columbus C. Baldwin, herewith filed, shall be taken and considered by the court as fully and to all intents and purposes as if the same had been taken under a commission duly issued out of this court, and shall be considered by the court as evidence therein.

ALEXANDER NEILL,
Solicitor for Plaintiff.
WILLIAM KEALHOFER,
Of Counsel for Defendants.

March 19th, 1896.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guardian of Columbus Calvert Baldwin,
—
THE COUNTY COMMISSIONERS OF WASHINGTON County and D. Frank Hull, Collector.
No. 4855. Equity.

I hereby certify, that on this 4th day of March, in the year eighteen hundred and ninety-five, before me, the subscriber, a notary public of the State of New York, in and for the city and county of New York, personally appeared William W. Baldwin, the party named in the proceedings in the above-entitled cause, and made oath in due form of law that he is now and has been for the past six (6) years continuously a resident of said State and city, and further that he has not resided in the State of Maryland for six years last past.

(Seal's Place.) In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

ROB'T J. WILDES,
Notary Public, New York and Kings.

WM. WOODWARD BALDWIN.

Interlineation on first line made before acknowledgement.
ROB'T J. WILDES.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guardian of Columbus C. Baldwin,
—
THE COUNTY COMMISSIONERS OF WASHINGTON County and D. Frank Hull, Collector.
No. 4855. Equity.

I hereby certify, that on this 4th day of March, in the year eighteen hundred and ninety-five, before me, the subscriber, a notary public of the State of New York, in and for the city and county of New York, personally appeared Christopher C. Baldwin and made oath in due form of law that he is the father of Columbus Calvert Baldwin, the party named in the proceedings in the above-entitled cause, and that the said Columbus Calvert Baldwin was born on the sixth day of January, in the year eighteen hundred and seventy-two, and further that the said Columbus Calvert Baldwin is a resident of the city and State of New York, and has continuously resided therein for twenty years last past, and that he has not been a resident of the State of Maryland during the past twenty years.

43

(Seal's Place.) In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

ROB'T J. WILDES,
Notary Public, New York and Kings.
C. C. BALDWIN.

Interlineation on first line made before acknowledgement.
ROB'T J. WILDES.

(Filed March 20th, 1896.)

Opinion and Order of Court.

In this case the personalty of the estates of Mrs. Louisa Roman and her son, both residents of Washington county, passed by a course of administration into the hands of Mr. C. C. Baldwin, as acting guardian for his infant children. Both he and his ward were residents of New York. Mr. C. C. Baldwin was succeeded as guardian by Mr. R. W. Baldwin, and upon his death by William W. Baldwin, the complainant in this case.

The bill in this case is for an injunction to restrain the collection of the taxes levied by the county commissioners on the amount of the register's return*ed* for the years 1893 and 1894, made under the requirement of section 9 of article 81 of the Code. This section reads: "The several registers of wills in this State shall annually, on or before the first day of March, return to the county commissioners or appeal tax court, a summary account of all property that shall appear by the records of the several orphans' courts to be in the hands of each executor, administrator or guardian as such; and all said property if not before assessed, shall then be assessed; and every executor, administrator or guardian shall be liable to pay the taxes levied thereon and shall be allowed therefor by the orphans' court in his accounts."

The bill is filed by the guardian, and charges that the register of wills of Washington county made the return required by section 8, for the years 1893 and 1894; that the county commissioners placed the amount on the levy list and assessed taxes thereon and placed the same in the hands of D. Frank Hull, the tax collector of State and county taxes, and that he has notified the complainant of his purpose to collect the same; that the estate of the ward is composed entirely of personalty, and that the ward was of age on the 6th day of January, 1893, which was prior to the time of the assessment and levy of taxes. An agreed statement of facts has been submitted, which in effect admits the allegations of the bill, with the

44 further fact that this guardianship was commenced in the orphans' court of Washington county on November 15th, 1879, by Mr. C. C. Baldwin, as acting guardian charging himself with the money due his ward from the estates of the said decedents of Washington county, and is within the jurisdiction of the orphans' court of Washington county, and has continued until the filing of the bill in this case.

The first contention on the part of the complainant is that this estate being personalty follows the domicil of the holder or owner, and is to be taxed there and not here. While this is the general rule, it may be taxed elsewhere if the statute so provides. *Cooley on Taxation*, ch. XII, p. 270. By the express terms of the section cited, all property returned as in the hands of an executor, administrator or guardian is made liable to assessment and taxation. Without this statutory provision the case is free from difficulty on this contention, for it is an established rule that where a fund is under the direction of a court it is taxable in the jurisdiction having control of it. *Bonaparte Ex'r vs. Mayor and Council*, 63 Md., 465; *Lewis vs. County of Chester*, 60 Pa. St., 325; *Supervisors vs. Davenport*, 40 Ills., 187, *Cooley on Taxation*, 271. It is further contended that while this may be a correct rule of law during the minority of the ward, it has no application after the ward reaches his majority, because the estate is then payable to the ward and the trust is at an end, or as insisted upon by the complainant, the estate is transferred by operation of law and is no longer under the control of the guardian.

The old guardianships of the common law are now superseded by the more modern chancery or statutory guardianships, which are applicable to estates of this kind. Section 192 of art. 93 of the Code (1888), is clear on this point:

"On a ward's arrival at age, or on the marriage of a female ward, the guardian shall exhibit a final account to the orphans' court, and shall deliver up agreeably to the court's order, to the said ward all the property of such ward in his hands, including bonds and other securities, and on failure his bond may be put in suit."

In construing this section of the Code, the court of appeals in the case of State, use of Henderson's Ex'rs, *vs.* Henderson & Egnor, 54 Md., 344, says: "From the moment the ward reaches the age when the law makes him free, what the guardian owes the ward becomes a debt for which he may immediately sue. All money due him and properly belonging to him, are from that moment legally demandable, and he may sue the guardian on his bond for its payment and delivery." While the question at issue in that case was the point of time at which the statute of limitations commenced to run, it is therein stated that the affirmative acts of the guardian in passing his account and delivering the money and property, are elements of the statutory guardianship, and the ward is not in actual possession of his estate upon the attainment of his majority. It is not attempted to be shown in this case, either by an allegation in the bill or in the statement of facts, that the possession of the guardian has, in fact, ceased, and the ward is in actual possession.

45 There is another reason why the complainant should be denied relief in this case. The direction of the statute is, as soon as the ward arrives at age, the guardian is bound to pass his final account and deliver over the estate, and his failure to do so is a breach of duty. *State, use of Henderson's Ex'rs, vs. Henderson & Engvr, supra.* If, by such default, he has injured his ward to the extent of the imposition of these taxes, the ward has remedy by

action on the bond. The guardian's own *laches* in respect to his duty, cannot be made the basis of equitable correction on his own behalf. A suitor can hardly gain the confidence or appeal to the conscience of a court of equity by exhibiting his own dereliction of duty.

The bill will therefore be dismissed.

EDWARD STAKE.

(Filed April 6th, 1896.)

Decree.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guadn., &c.,
vs.
THE CO. COMMS. OF WASH. CO. ET AL. } No. 4855. Equity.

In accordance with the opinion heretofore filed in this cause, it is hereby adjudged, ordered and decreed by the circuit court for Washington county, sitting as a court of equity, this 26th day of May, A. D. 1896, that the bill of complaint in the above cause be and the same is hereby dismissed with costs.

EDWARD STAKE.

(Filed May 27th, 1896.)

Order for Appeal.

In the Circuit Court for Washington County.

WILLIAM W. BALDWIN, Guardian of Columbus C. Baldwin,
vs.
THE COUNTY COMMISSIONERS OF WASHINGTON County, D. Frank Hull, Collector. } No. 4855. Equity.

Mr. George B. Oswald, clerk:

Please enter an appeal from the decree in the above cause filed May 27th, 1896.

ALEX. NEILL,
Sol. for Plaintiff.

(Filed May 27th, 1896.)

46 STATE OF MARYLAND, *Washington County,* } *To wit:*

I hereby certify that the aforegoing is truly taken from the record and proceedings of the circuit court for Washington county, sitting as a court of equity, in the foregoing case.

(Seal's Place.) In testimony whereof, I hereunto subscribe my name and affix the seal of the circuit court for Washington county, at Hagerstown, this 27th day of May, A. D. 1896.

GEO. B. OSWALD, *Clerk.*

47 And now, at this day, to wit, the said first Monday in April, being the second day of the said month, in the year of our Lord one thousand eight hundred and ninety-nine, come again into the court of appeals here the parties aforesaid by their attorney aforesaid.

And afterwards, to wit, on the 27th day of April, 1899, was filed the following agreement to amend record, viz:

Agreement. Filed April 27th, 1899.

Court of Appeals of the State of Maryland.

WILLIAM HENRY BALDWIN, JR., and Another, Appellants,
against
STATE OF MARYLAND, Use of D. FRANK HULL, Collector &c., Appellee. } No. 52.

It is agreed that the defendant's eleventh, twelfth, thirteenth, fourteenth, and fifteenth prayers, as they appear in the printed record, are incorrect copies, and that the word "tenth" should be substituted for the word "fifth" in each of said prayers, and that this agreement supersedes and is designed as a substitute for the agreement appearing on the last page of the printed record and filed April 10th, 1899.

Dated April 27th, 1899.

J. MARKHAM MARSHALL,
Att'y for Appellee.
CHARLES G. BALDWIN,
CHARLES A. BOSTON,
Att'y- for Appellants.

48 Whereupon, as well the record and proceedings aforesaid and the judgment given in form aforesaid being seen and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here that there is no error in the record of proceedings aforesaid nor in the giving of the judgment aforesaid, therefore it is considered by the court of appeals here, on this 22d day of June, 1899, that the judgment aforesaid, given in form aforesaid, be in all things affirmed and stand in full force and effect, the said causes for error alleged notwithstanding; and it is further considered by the court of appeals here that the said State, use of D. Frank Hull, collector, &c., have execution against the said William H. Baldwin and Summerfield Baldwin as well for the debt, damages, costs, and charges aforesaid adjudged unto it in the said superior court of Baltimore city, as also the sum of — adjudged unto the said State, use of D. Frank Hull, collector, &c., by the court of appeals here, on its assent, for its costs and charges which it hath sustained by occasion of the delay of the execution of the judgment aforesaid, by pretext of the prosecution of the said appeal by the said Wm. H. Baldwin

and Summerfield Baldwin for the correcting of errors of and upon the premises, as aforesaid, prosecuted, &c.

ALLAN RUTHERFORD,
Clerk Court of Appeals of Maryland.

49 And on the same day, to wit, June 22nd, 1899, the court of appeals of Maryland filed the following opinion, viz:

50 Filed June 22nd, 1899.

Court of Appeals of Maryland, April Term, 1899.

WILLIAM HENRY BALDWIN and SUMMERFIELD BALDWIN
vs.
STATE OF MARYLAND, Use of D. FRANK HULL, Collector, &c.

Judge BOYD delivered the opinion of the court:

This is an appeal from a judgment of the superior court of Baltimore city, on a verdict rendered by the court, sitting as a jury, in an action on the bond of William Woodward Baldwin, guardian of Columbus C. Baldwin, brought in the name of the State of Maryland, for the use of D. Frank Hull, collector of State and county taxes for Washington county. In the case of Baldwin *vs.* Washington County, 85 Md., 145, we affirmed a decree of the circuit court for that county, refusing to grant an injunction to restrain the collection of a part of the taxes involved in this suit (that case including those for the years 1893 and 1894, while this also embraces those for the year 1895), on the ground that under a proper interpretation of our statutes the situs of personal property in the hands of a guardian is for the purposes of taxation in the county where he was appointed, and the fact that both guardian and ward were non-residents of this State did not relieve the guardian from the payment of the taxes. It was also determined that, although the taxes were levied after the ward had become of age, inasmuch as the guardian had not settled his final account in the orphans' court, it was the duty of the register of wills to report the property liable to taxation, of the county commissioners to assess it, and of the guardian to pay the taxes thereon, notwithstanding the fact that the ward was of age. In this case, as in that, there was an agreed statement of facts and it is now agreed that on the

51 26th day of May, 1896, the guardian stated a final account in the orphans' court and delivered all the property to the ward, who subsequently executed a release and discharge to the defendants, both being done prior to the institution of this suit. The defendants have interposed numerous defences, they having filed originally twenty-six pleas and afterwards twenty-four additional ones. They also offered fifteen prayers, made a motion in arrest of judgment, and excepted to the rulings of the court on various offers of evidence, but we will not attempt to discuss each plea and prayer seperately and will only refer to the principal points presented.

1. The first question to be considered is whether the defendants, who are sureties on the bond, are responsible, even conceding their principal to be so. It will be admitted at the beginning of the discussion that it does not necessarily follow that sureties on a guardian's bond are liable because the guardian is. Their responsibility must depend upon the extent of the obligation created by the terms of the bond and the statutes which can be read into it. This bond is in the exact language of that prescribed by the statute, and therefore is unlike the one in State *vs.* Hill *et al.*, 88 Md., —, where the parties had deliberately excluded a term or condition of the statute which the plaintiffs sought to import into the contract. The condition is that the guardian "shall faithfully account with the orphans' court of Washington county, as directed by law, for the management of the property and estate of the orphan under his care, and shall also deliver up the said property agreeably to the order of said court, or the directions of law, and shall in all respects perform the duty of guardian to the said Columbus C. Baldwin, according to law." It having been
52 so recently decided by us that the guardian is responsible for the taxes levied for the years 1893 and 1894, and those for 1895 having been levied under the same conditions, it is useless for us to discuss that further. The question now to be determined is, laying aside for the present the other defences urged, are the sureties on his bond liable? Section 65 of art. 81 of the Code provides that "administrators shall pay all taxes due from the decedents, and on failure their bonds shall be put in suit for the use of the State and recovery had for the whole amount of taxes due and interest from the time they were payable; this section shall also apply to guardians for taxes upon property in their hands as such." And section 9 of that article, which requires the registers of wills to return to the county commissioners a summary account of all property that shall appear by the records of the several orphans' courts to be in the hands of each executor, administrator, or guardian, provides that every "executor, administrator or guardian shall be liable to pay the taxes levied thereon and shall be allowed therefor by the orphans' court in his accounts." There would seem to be no room for doubt that the bond of a guardian is liable for taxes levied on property in his hands while he continues to be such guardian, but does the fact that his ward was of age when the taxes were levied relieve his sureties, notwithstanding he still held the property and had not filed his final account?

Their liability for the property certainly did not cease when the ward became of age, but they could be sued at any time within twelve years from that date, at least for the benefit of the ward, if the guardian did not account with him during that time.
53 State, use Henderson, *vs.* Henderson, 54 Md., 333. They were not only liable for the *for the* property he had when his ward became of age, but on the income from it until he accounted with him, unless, of course, he in some way discharged them. In Griffith *vs.* Parks, 32 Md., 1, the court held that the sureties were liable, although after one of the wards had become of age the orphans'

court had passed an order authorizing and directing the guardian to deposit money in bank in the names of his wards, there to be held subject to the control of the court, which was done, and the court then passed another order authorizing him to withdraw the money so deposited for the purposes of investment, and it was placed on the ground that "there had been no account settled with the court and the fund had never been ordered to be paid over to the ward." It was also said in that case, "As the account is to be rendered to the court after the ward becomes of age, its jurisdiction and control of both fund and guardian must of necessity remain until such final accounting." If, then, the property so held by the guardian after the ward becomes of age and before he accounts to the court is of the character liable to taxation, why are not both the guardian and his sureties liable for the taxes? We have already determined in the other case that the guardian is, and as he still holds the property as guardian, as decided in Griffith *vs.* Parks, by the very terms of the statute the bond is liable to be put in suit "for taxes upon property in his hands as such." If it were not so, any guardian, resident or non-resident, who is not financially responsible, who held property that could not be reached by a tax collector, could collude with his ward and thus let the property escape taxation indefinitely.

The requirement to pay taxes on the property cannot prop-
54 erly be said to impose new duties on the guardian or to add new responsibilities to the sureties, such as were not contemplated by the contract when they went on the bond, for he was required to pay taxes, as one of the duties imposed upon him by law and indeed as a consequence of his having taxable property, and notwithstanding the ward is of age, the sureties were responsible for the proper payment of the money or delivery of the property in the guardian's hands. It is not contended that they are liable for any additional amount not in the guardian's hands when the ward became of age, except, of course, the income of interest, and they were already responsible for the property and its income until the guardian settled his account. The guardian is entitled to be credited with all sums he properly pays out of his income or even out of the principal when duly allowed by the court, and by section 9 of article 81, *supra*, he is expressly allowed credit for taxes paid. The only possible difference is that instead of being responsible to one person (the ward) they are responsible for the proper payment to those entitled to be paid, but that responsibility they assumed when they went on the bond. The law then requires their principal to pay the taxes on taxable property in his possession, and it being one of the duties required of him, they undertook the proper performance of it by him, just as they did his other duties. It is therefore in no sense imposing any new obligations on them or adding to the risks they assumed when they became sureties.

Nor can the fact that after the taxes were levied, but before this suit was brought, the guardian settled his final account and the

ward executed a release of the defendant affect the question.
55 The settlement of the accounts between them cannot bind others who are not parties to it. If, as we have determined, the guardian and the appellants, as sureties on his bond, were responsible for the taxes neither of them could be relieved of the liability by such settlement. In an action on a guardian's bond it was held, in Spedden *vs.* State, 3 H. & J., 251, that accounts passed in the orphans' court were not final and conclusive on either the guardian or the ward, but were only *prima facie* evidence of the amounts due, etc. See also State *vs.* Baker, 8 Md., 44. Manifestly the release by the ward cannot discharge any obligations to third parties.

It is said that if the plaintiff's theory is correct there would be no end to the liability of the sureties, but we do not see how such results can follow. In the first place, the right of action on the bond would be barred at the end of twelve years from the time the ward became of age. In Henderson's case, *supra*, the majority of this court held distinctly that the limitation ran from the time the ward became of age, and not, as was urged in the dissenting opinion, from the time of the new breach. As, after the expiration of the time fixed by the statute, there could be no recovery by the ward against the guardian and his sureties for the property or its value, manifestly when that right of recovery ceased a tax could not be imposed on the property so as to bind the sureties. But there would be no necessity for the sureties incurring liability for that time. It is true that section 255 of art. 93 of the Code, cited by the appellants, which provides for the orphans' court *ex officio* requiring executors, administrators, and guardians to make reports, etc., when in default, concludes by saying that "no guardian shall be
56 thus summoned *ex officio* to appear before the court after his ward has arrived at legal age," etc., but that does not preclude a proceeding at the instance of an interested party, such as a surety or a ward, to require the guardian to settle an account.

We do not understand why no one but the ward can sue a guardian's bond. The fact that no case has been found where it has been done does not of itself settle the question. Fortunately, it does not often occur (and we know of no such case in this State, at least) that a guardian, after going into court for the purpose of testing the validity of a tax imposed upon property in his hands and after the question is settled against his contention by the appellate court of the State, will still undertake to avoid the payment of them. No better illustration of the importance of permitting some one other than the ward to sue could be furnished than this case. But section 65 of art. 81, which expressly gives the right of action on the bond, for the use of the State, to recover the taxes, is of itself an answer to the statement that no one but the ward can sue, and section nine requires him to pay the taxes and allows him credit for them. Of course the bond is required mainly for the protection of the ward, at least he is the one most likely to be affected by the default of the guardian, but the condition of it is in terms broad enough to cover the rights of others interested in the estate, if there be any, as well as the ward. The guardian must deliver

up the property agreeably to the order of the court or the directions of law "and shall in all respects perform the duties of guardian." When it is once established that his duty is to pay the taxes, does it not come within the very letter of the undertaking of the sureties? And if that be so, can it be
57 possible that no one but the ward (who is more interested from a financial standpoint in not paying the taxes than the guardian is) can sue, and that if he will not, and the guardian and the property are beyond the reach of the tax authorities, that the taxes cannot be collected. Neither reason nor authority sustains such contention. The cases of State, use Murray, *vs.* Murray, 24 Md., 310, and Fridge *vs.* State, 3 G. & J., 103, cited by the appellants, certainly do not. In the former case the court said that the companies which sought to get the benefit of the suit against the bond were tort-feasors equally with the guardian, and of course they could not sue the bond for that act if they could for any other, and in the latter case, which was a suit for the use of the ward, it was said that if the ward had given a good release it would have discharged the guardian and his sureties from all responsibility on the guardian's bond; but that, of course, only referred to a suit between her and the bondsmen.

2. It is next contended that the plaintiff (meaning Hull) has no right to sue, and several reasons were assigned. In the first place it is said that section 65 of art. 81 provides that on failure to pay the taxes the bond shall be put in suit "for the use of the State." The suit must be in the name of the State, and it certainly does not mean that it must be brought by the "State of Maryland for the use of the State of Maryland." The State must act through some officer or agent, and as D. Frank Hull was the collector of State taxes for Washington county, a suit brought as this was, so far as the State taxes are concerned, would be for the use of the State. The State is and must be the legal plaintiff, as the bond is given
58 to it, and there is no provision in the statute for the suit to be brought in any other way. In Fridge *vs.* State, *supra*, it was determined that in a suit on a guardian's bond in which an infant was the equitable plaintiff "it was not necessary for the purposes of the suit to enter the use at all; although it is usually done in such cases, it might have been carried on as well without it as with it, and, being done, her non-age could not form the fit subject of a plea, the action not being brought in her name." The court referred to State *vs.* Dorsey, 3 G. & J., 75. There the suit was on a tax collector's bond and was brought for the use of the levy court of Baltimore county, which became extinct after the suit was brought. The court said, "The judgment is entered in the name of the nominal, the legal plaintiff, and it is nothing to the defendant who may be entitled to the equitable interest," and again, "There is no necessity for the purposes of the suit to enter the use, whether it is brought for the benefit of an individual or a corporation, nor if entered does it make any difference to the defendant how it may vary or change as to the person asserting the same right. It does not affect his defence nor can any change of the use become a fit subject of plea.

The judgment is in the name of the State and will be for the use of whoever is entitled to the beneficial interest." In Wallis *vs.* Dilley, 7 Md., 250, Dorsey's case was cited to sustain a suit on an injunction bond by the obligees, one of whom had taken the benefit of the insolvent laws, and a permanent trustee had been appointed, and it was said, "In the exercise of a quasi-equitable jurisdiction courts of common law, on motion of a *cestui que trust* or of a defendant, will order the proper use to be entered in the action." Dorsey's case has frequently been ap-
59 proved by this court. Logan *et al. vs.* State, 39 Md., 188; Dashiell *vs.* Mayor, etc., of Baltimore, 45 Md., 620; Le Strange *vs.* State, 58 Md., 46. If there was any possible danger of the defendants being required to pay the wrong party, they could have made a motion to have the case entered to the use of the right party. But the State could clearly permit one who was its tax collector for these taxes to sue, and the statute did not mean to exclude the county commissioners or its collector, for it required the guardian to pay all taxes—not simply the State taxes. But independent of that, section 9 makes it the duty of the guardian to pay the taxes which the county commissioners levy, which under our laws are the State and county taxes, and not simply the State taxes, and as the guardian is required to pay them and is authorized to be allowed for them in his accounts, his bond is liable if he fails to perform that duty. The tax collector is required to account for the taxes and to pay them unless excused by the proper authorities. It is therefore his duty to collect them, if that can be done, and with such burden on him there can be no reason why he should not be permitted to sue the bond, if the guardian does not pay them, as he is the person to whom the guardian is required to pay them.

But it is contended that section 82 of article 81 limits the right of the tax collector to proceed to one year after the expiration of the term for which he was appointed, unless his time be extended by the court under section 38 of article 26 of the Code. Section 82 was not intended as a limitation on the collector as to time within which he can receive taxes placed in his hands for collection, but as an extension of the time within which he
60 could resort to all the remedies the law furnished him during his term. It provides that "he shall be allowed the term of one year after the expiration of the time for which he was appointed, to collect all balances due him in the same manner as he could collect the same before the expiration of his term of office." And section 38 of art. 26 authorizes the court to extend the time of a collector who has failed or neglected to collect taxes within the time prescribed by law, which extension may be limited in the discretion of the court and may be renewed as may be deemed reasonable. When that is done he can proceed by distress or any way authorized during his term, but even if Hull was not authorized to collect the taxes in the ordinary way after the year and they were still due to the State and county, the plea "that the alleged cause of action did not accrue within one year before this suit" was manifestly bad, as there was no such limitation fixed by law. If in

point of fact no order was passed extending his time, which by the statute is made a matter of record, and therefore easily ascertained, the defendants could, under the case of Wallis *vs.* Dilley, *supra*, have had the proper use entered, if they deemed that necessary for their protection. Inasmuch, then, as the State was the legal plaintiff, and it is admitted that the taxes had not been paid, "the judgment is entered in the name of the State for whoever is entitled to the beneficial interest," and a plea that Hull was not entitled to receive the taxes was no answer to the suit, even if it be admitted that in a suit in his own name he would have been compelled to allege and prove that his time had been extended.

3. The fifth plea alleges that the taxes for 1893 were not
61 levied within four years before this suit, and the defendants plead section 83 of art. 81 of the Code "in bar of any recovery of such taxes as are legally barred by said statute." That section is as follows: "All taxes levied for county or city purposes shall be collected by the collectors of the counties or cities, respectively, within four years after the same shall have been levied; and if the same shall not be collected within four years, the parties from whom such taxes may be demanded may plead this section in bar of any recovery of the same." In Hebb *vs.* Moore, 66 Md., 167, in speaking of that provision, this court said: "This section of the Code manifestly was intended to apply only to such cases and such persons when the collector could on notice proceed summarily to sell the debtor's property for the taxes; and whenever he could do so, and did not resort to his distress and sale, the statute was permitted to be pleaded as a bar after the expiration of four years from the levy of such taxes. It was not intended and could not have been intended to be a bar where the law would not allow the collector to resort to his legal remedies for summary enforcement of payment." There the property was under the control of a trustee under the jurisdiction of the court, and hence the collector could not have proceeded against it; and as in this case the collector could not seize any property, as it was out of the State, even if it was of the character that could be seized and sold if within his jurisdiction, it might with force be said that under the above decision this particular provision of law is not applicable to this case. But independent of
62 that, the law authorizes the parties from whom such taxes may be demanded to plead the section in bar of recovery. The sureties are not the parties from whom these taxes were to be demanded within the meaning of that statute, and this suit is really to recover damages sustained by reason of the guardian's failure to perform his duty in not paying the taxes, which are the measure of the damages recoverable on the bond, which bond is not barred under the statute applicable to it. The limitations prescribed by this section, therefore, cannot be applied to this suit.

4. The only other question that we need refer to is the constitutionality of the tax thus levied on the property. Having determined in the case of Baldwin *vs.* Washington County that the situs of *of* the property was in that county, we do not propose to enter into an extended discussion of the constitutional questions attempted

to be raised. We will, however, correct some erroneous conclusions that the counsel for the appellants seem to have reached in reference to our statutes. In the first place, there is no provision in them requiring the guardian of a ward who owns real estate out of the county where the guardian was appointed to pay the taxes levied thereon in the latter county, and such is neither the law nor the practice in this State. The guardian of a ward who owns real estate in this State has it "under his care," but it is not property "in the hands of" such guardian which is intended to be assessed as provided for in section 9 of art. 81 of the Code. Real estate is assessed by the assessors duly appointed under the statute in the county where it lies, and taxes are levied thereon by the county commissioners and paid there. That is done whether owned by adults, infants, or even corporations, the latter being done so as to give the benefit of taxation on
63 property of that character to the county where it is situated, which for many years had been the policy of the laws of this State. The property reported to the county commissioners by the register of wills is only assessed, "if not before assessed," and, as we intimated in Baldwin *vs.* Washington County, the provision only applies to property that is liable to taxation under the laws of the State. There is no discrimination whatever against infants or their guardians, but they are only bound to pay taxes as others do, no more, and, so far as the law can prevent it, no less. The guardian has every opportunity to be heard before any new assessment is made, and to have any report of the register of wills corrected, if erroneous. The reports are required to be made on or before the first day of March, and the levies in most cases, as in the case now under consideration, are not made until June. So, if the guardian attends to his duties, there is no possible danger of any unjust assessment against his ward. The agreed statement of facts in the former record, made a part of this, shows that the property assessed consists of stocks and bonds of corporations organized and located outside of the State, which under our laws are assessable. There is no justification for the claim made in the appellant's brief that all the property of an infant is taxable in the county of the guardian's appointment, or that the legislature has devised a plan for taxing the property of a non-resident ward regardless of its location.

Nor is there any valid reason to contend that there is no provision in the law for notice. In addition to what we have said above, we refer to section 145 of the same article of the Code, which expressly prohibits the county commissioners from increasing the as-
64 sessment of the property previously assessed or adding any new property not valued and returned to them by the proper assessors or collectors without notice, as therein required.

It is also claimed that the law provides a different scheme of taxation for infants under guardianship from that of adults, but we fail to see any foundation for that. It is true the register is required to make the return of the property in the hands of the guardian, but that is simply because the orphans' court has supervision over the ward's property, and is supposed to have an accurate account of

that actually held by the guardian. The same thing is required of the registers as to executors and administrators and officers of corporations are required to give statements in much more detail of the property under their control.

We, of course, do not question the decisions of the Supreme Court of the United States, cited by the appellant, as to the right of a State to tax property outside of its limits when the owner is beyond its jurisdiction, but we do not deem them applicable to this case. In Baldwin *vs.* Washington County we held that the situs of this property was in that county, and we have no reason to change the views therein expressed. Under our statutes, property of wards in the hands of guardians appointed in this State is under the direct control of the courts appointing them. This is necessary for the protection of the wards, and our orphans' courts make no distinction between resident and non-resident infants, if the latter come under their care. If the infant be a non-resident, a guardian can only be appointed if he has property in this
65 State. Sec. 203, art. 93. If he be a resident when the guardian is appointed and afterwards remove from the State, a guardian appointed at the place of his new residence has ample power to have the property transferred to him under section 196 of that article, as construed by us in Bernard *vs.* Trust Company, 80 Md., 118, but as long as that is not done the control and jurisdiction of the court here over his property does and ought to continue. In contemplation of law, the personal property remains in the county where the guardian was appointed, and is to be accounted for there and at no other place. No guardian can sell any property of his ward without an order of the orphans' court, and any sale or removal without such order is void and no title can pass to the purchaser. Sec. 173 of art. 93. Under section 237 the court can either *ex officio* or upon application require the guardian at any time to bring into court any money or funds received by him, can direct how they shall be invested, "and the same shall at all times be subject to the order and control of the court." It was never supposed that the fact that the guardian was a non-resident could for any purpose be the means of fixing the situs of the personal property at his place of residence. But we will not further discuss this question, as in the case of Baldwin *vs.* Washington County we did so at some length. No injustice can be done either the ward or guardian by the construction we have placed on the statutes in the other case, but we only require what any one having the protection and occupying the time of our orphans' court should readily assent to. In neither of the cases has there been any suggestion that this guardian or his ward has paid taxes on any of this property elsewhere, and therefore it
66 is not necessary to determine whether under those circumstances the county commissioners could relieve such property from assessment.

Although we have not attempted to discuss each plea, prayer, and exception separately, we have referred to such points as were urged at the argument, and we will affirm the judgment.

Judgment affirmed, costs to be paid by the appellants.

67 # 10098.

Bond. Filed July 18th, 1899.

Know all men by these presents that we, Summerfield Baldwin, of city of Baltimore and State of Maryland, as principal, and the United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto the State of Maryland, to the use of D. Frank Hull, collector of State and county taxes for Washington county in State of Maryland, in the full and just sum of four thousand dollars, to be paid to the said The State of Maryland, to the use of D. Frank Hull, collector of State and county taxes for Washington county, in State of Maryland, its or his certain attorney, executors, administrators, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, or successors, jointly and severally by these presents.

Sealed with our seals and dated this 10th day of July, in the year of our Lord, one thousand eight hundred and *ninety* ninety-nine.

Whereas lately, at a term of the court of appeals of the State of Maryland in a suit depending in said court between William Henry Baldwin, Jr., and Summerfield Baldwin, appellants, and State of Maryland, use of D. Frank Hull, collector of State and county taxes for Washington county, in State of Maryland, appellee, a judgment was rendered against the said William Henry Baldwin, Jr., and Summerfield Baldwin, and the said William Henry Baldwin, Jr., and Summerfield Baldwin having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Maryland, to the use of D. Frank Hull, collector of State and county taxes for Washington county, in State of

68 Md., appellee, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said William Henry Baldwin, Jr., and Summerfield Baldwin, appellants, shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

SUMMERFIELD BALDWIN. [SEAL.]
THE UNITED STATES FIDELITY [SEAL.]
& GUARANTY COMPANY.
EDW'D J. PENNIMAN, 2 *Vice-Pres't.* [SEAL.]
ARTHUR C. PIERCE, *Ass't Sec't'y.*

[½-ct. rev. stamp. 3-ct. rev. stamp.]

Sealed and delivered in presence of—
ROB'T L. RHODES.

Approved by—
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

69 STATE OF MARYLAND, *sct:*

I, Allan Rutherford, clerk of the court of appeals of Maryland, do hereby certify that the above and foregoing is a true and correct transcript of the record and proceedings in the case of William Henry Baldwin, Jr., and Summerfield Baldwin *vs.* The State of Maryland, use of D. Frank Hull, collector, &c., now on file in the clerk's office of the said court of appeals; and I do further certify that the said court of appeals of Maryland is the highest court of law or equity in said State in which a decision can be had in said case.

Seal Court of Appeals, Maryland.

In testimony whereof I have hereunto set my hand as clerk and affixed the seal of the said court of appeals this 27th day of July, A. D. 1899.

ALLAN RUTHERFORD,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No., 17,481. Maryland court of appeals. Term No., 367. William Henry Baldwin, Jr., & Summerfield Baldwin, plaintiffs in error, *vs.* The State of Maryland, to the use of D. Frank Hull, collector of State and county taxes for Washington county, Maryland. Filed August 2nd, 1899.

In the

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 1900.

WILLIAM HENRY BALDWIN, [illegible] SHEFFIELD BALDWIN,

Plaintiffs in Error,

vs.

THE STATE OF MARYLAND, to the use of D. FRANK HULL, Collector of State and County Taxes for Washington County, Maryland,

Defendant in Error.

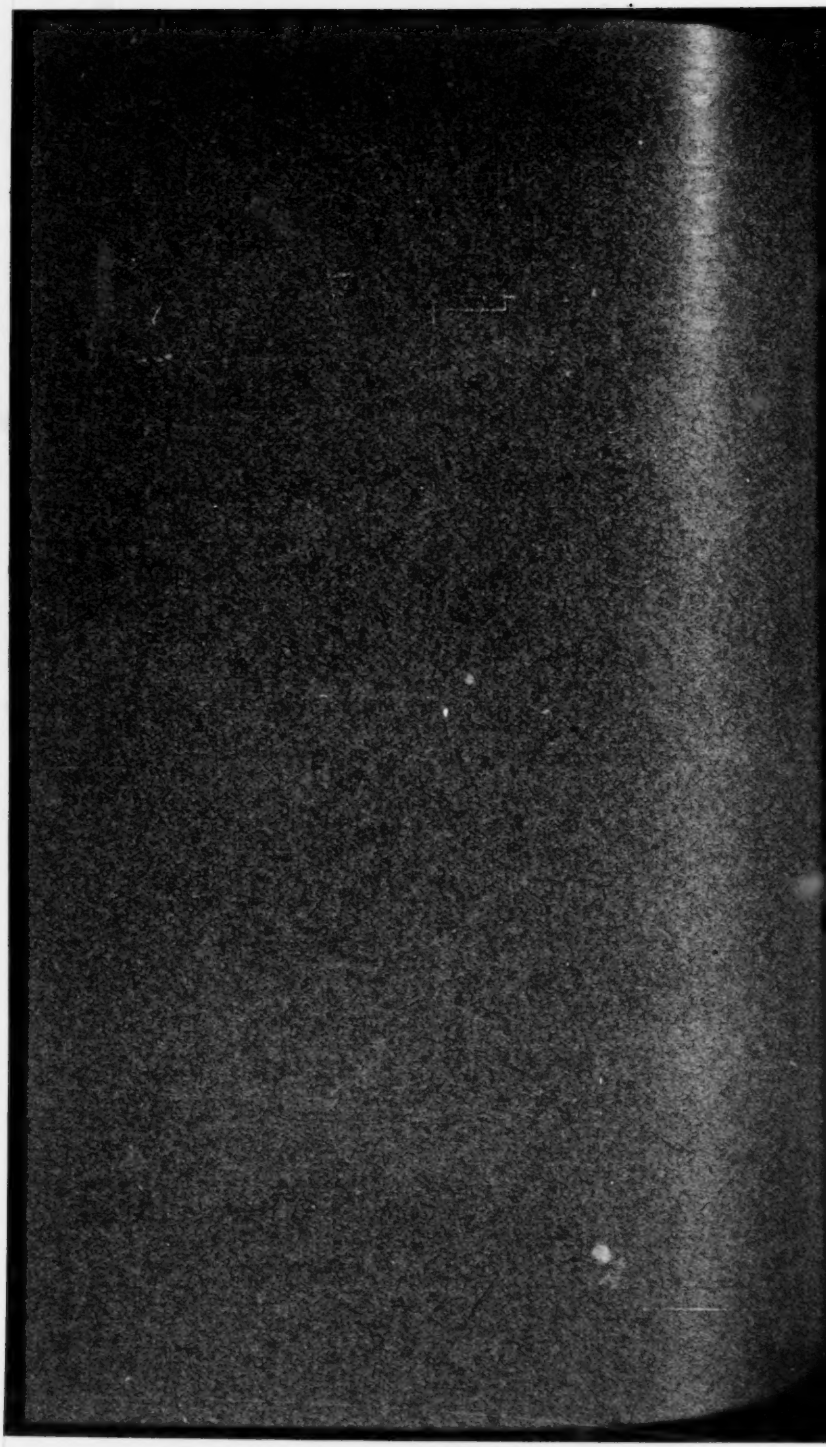
In Error to the Court of Appeals of the State of Maryland.

Brief for Plaintiffs in Error

in opposition to motion to dismiss for want of jurisdiction.

CHARLES A. BOSTON,

Counsel for Plaintiffs in Error.



13967

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 367.

WM. HENRY BALDWIN, JR., AND SUMMERFIELD BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, TO THE USE OF D. FRANK HULL, COLLECTOR OF STATE AND COUNTY TAXES FOR WASHINGTON COUNTY, MARYLAND, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

Brief for Plaintiffs in Error in Opposition to Motion to Dismiss for Want of Jurisdiction.

Correction.

We correct one statement of fact in the brief of the counsel for defendants in error (p. 2). There is no justification in the record for the averment that *prior* to 1893 the Register of Wills made annual returns, and that taxes were levied upon those returns and duly paid up to the year 1893. The record is absolutely silent on this point.

Statement.

The judgment which the plaintiffs in error seek to review, is a judgment against the bondsmen of a guardian requiring them to pay taxes in the State of Maryland, which their principal has not paid.

The principal was not a party to the suit, and the suit was not founded upon any judgment for the taxes, but merely upon the allegation in the declaration that the taxes were duly levied and assessed, and that the guardian had not paid them (printed record, p. 6). The bondsmen, therefore, were at liberty to contest and did contest the validity of the taxes.

The reason the payment of the taxes is opposed is that they were levied by the State of Maryland *upon absent property of a non-resident and absent adult.* The State has not jurisdiction of the owner, nor of the property, and has no means of collecting its exactions, except by enforcing the collection from residents of the State who happen to have given bond to the State for the faithful performance of the lawful duties of a non-resident guardian appointed, for the owner of the property while an infant, by a Court of the State during the infancy of the owner. The State being powerless to collect the tax by any ordinary method sues the guardian's bondsmen. The taxes were not levied during the infancy of the owner, but after he became an adult, there was no actual notice to him nor to his guardian, the property was all out of the State, the owner resided in New York, the guardian resided in New York, the property consisted of stocks and bonds of corporations organized and existing outside of the State of Maryland, and the bonds and the certificates of stock were physically located in New York (printed record, p. 16).

The State of Maryland claims the right to tax because of the following facts: Originally and before its removal from the State, the property had belonged

to two residents, upon whose death it devolved upon the infant; the latter was and continued always thereafter to be a citizen and resident of New York. Under the law of Maryland a guardian was appointed for the infant to receive the property from the administrators of the decedents. This guardian and a successor in office were relieved of their duties, and finally William Woodward Baldwin, a citizen and resident of New York, was appointed guardian for the infant. He gave bond in the usual form (Printed Record, p. 17), conditioned upon the performance of his lawful duties as guardian, and took the property for safekeeping into his custody, and, it being portable, he removed it from Maryland into New York. Subsequently the infant arrived at full age, and under an agreement between the guardian and the ward the guardian continued to manage the property. After the levy of the taxes now sued for, the guardian stated a final account with his ward in the court of his appointment and was discharged (Printed Record, p. 16).

The Court of Appeals of Maryland has sustained the power of the State to levy and collect the taxes upon the proposition expressed in its opinion (on printed p. 47) in the following words: "In contemplation of law, the personal property remains in the county where the guardian was appointed."

We combat this proposition and maintain that no fiction enacted by a Legislature or invented by a Court can give a State power to tax absent property of a non-resident owner. We have insisted that the collection of these taxes from the plaintiffs in error is a violation of rights secured to them by the Constitution of the United States.

We do not conceive that, upon this motion, it is necessary or permissible to discuss whether the Court of Appeals of Maryland is right in its position on the federal question, or whether we are correct in the views that we respectfully hold.

The assignment of errors is sufficient to raise the Federal questions in this Court.

Assignment of Errors—Now Relied On.

1. " That the law of the State of Maryland whereby and whereunder the taxes described in the record and proceedings were levied and assessed, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with the fourteenth (14) amendment of the Constitution of the United States, inasmuch as said law so expounded abridges the privileges and immunities of citizens of the United States—to wit, the privileges and immunities of the appellants and of William Woodward Baldwin and Columbus Calvert Baldwin, and of each of them, severally citizens of the United States, contrary to said Fourteenth Amendment of the Constitution of the United States."

2. " That the law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with the fourteenth amendment of the Constitution of the United States, inasmuch as said law so expounded deprives the said appellants and the said William Woodward Baldwin and Columbus Calvert Baldwin, severally citizens of the United States and within its jurisdiction, and each of them, of property without due process of law, and contrary to the fourteenth amendment of the Constitution of the United States."

3. " That the law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with the fourteenth amendment of the Constitution of the United States, inasmuch as said law so expounded denies to the appellants and to William Woodward Baldwin and Columbus Calvert Baldwin, and to each of them, within the jurisdiction of the State of Maryland, the equal protection of the laws."

4. "That the law of the State of Maryland, whereby and whereunder the alleged returns of the register of wills of Washington county, described in the record and proceedings, were directed to be made, and were made, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with Article 4, Section 2, of the Constitution of the United States, inasmuch as said law so expounded denies to William Woodward Baldwin and Columbus Calvert Baldwin, and each of them, severally citizens of the United States and of the State of New York, the privileges and immunities of citizens of the State of Maryland."

5. "That the law of the State of Maryland, whereby and whereunder the said alleged returns of the register of Wills of Washington county aforesaid were directed to be made and were made, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with the fourteenth amendment to the Constitution of the United States, inasmuch as said law so expounded deprives the appellants and each of them, and the said William Woodward Baldwin and Columbus Calvert Baldwin, severally citizens of the United States and within its jurisdiction, of property without due process of law."

6. "That by the record and proceedings aforesaid it appears that the judgment aforesaid was given for the appellee against the appellants;

"Whereas, by the supreme law of the land, as embodied in the Constitution of the United States, the said judgment ought to have been given for the said appellants against the appellee."

POINTS.

THE MOTION SHOULD BE DENIED.

The plaintiffs in error maintain:

I. That the questions presented by the assignment of errors are open for determination.

II. That a Federal question was involved, was specially presented by them for decision to both Courts below, was necessary to the determination of the case, and was considered and determined adversely.

III. That this Court has jurisdiction, and should therefore dismiss the motion.

STATUTE LAW OF MARYLAND.

The tax law involved is as follows:
Code of Public General Laws, Art. 81:

> SEC. 9. "The *several registers of Wills* in this State *shall annually*, on or before the first day of March, *return to the county commissioners* or appeal tax court *a summary account of all property* that shall appear by the records of the several orphans' courts to be *in the hands of each* executor, administrator or *guardian* as such; and all such property, if not before assessed, shall then be assessed; [and every executor, administrator or guardian shall be liable to pay the taxes levied thereon, and shall be allowed therefor by the orphans' court in his accounts."
>
> SEC. 65. "Administrators shall pay all taxes due from their decedents as preferred debts, and to the exclusion of all others, except the necessary funeral expenses; and on failure, their bonds shall be put in suit for the use of the State, and re-

covery had for the whole amount of taxes due, and interest from the time they were payable; this section shall also apply to guardians for taxes upon property in their hands as such."

The appointment of the guardian was under Maryland Code of Public General Laws, Art. 81, Sec. 203:

"In case any non-resident infant shall be entitled to any property, real or personal, in this State, and shall have no guardian or guardians in the place of the residence of the said infant, duly qualified, and who shall have given bond with sufficient security for the performance of his trust, it shall be lawful for the orphans' court of the city or county in which the said property of the said infant may be, or where the debt or chose in action due to the said infant may be recoverable, to appoint a guardian or guardians over the property or claim of such infant, which said guardian or guardians shall give bond with security in the same manner as if such infant resided in this State."

The bond was given pursuant to Article 93, Code Public General Laws, Section 155:

"Every guardian appointed by the court, and every guardian by will, or natural guardian, before he proceeds to act as such, shall enter into bond to the State of Maryland in such penalties and with such sureties as the court shall approve, and to be recorded and be subject to be put in suit, and to be in all respects on a footing with an administration bond, with the following condition:

"'The condition of the above obligation is such, that if the above bounden , as guardian to , of county, shall faithfully account with the Orphans' Court of county, as directed by law, for the

management of the property and estate of the infant under his care, and shall also deliver up the said property agreeably to the order of the said court or the directions of law, and shall in all respects perform the duty of guardian to the said according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue in law; and the said bond shall be liable for the proceeds of sales of the real estate of his ward which shall come into his possion as well as for other property."

I.

THE QUESTIONS PRESENTED BY THE ASSIGNMENTS OF ERROR ARE OPEN FOR DETERMINATION.

The learned counsel for the defendant in error falls into the same inaccuracy respecting the previous adjudication of this same case as he does respecting the biblical allusion by which he illustrates his point.

He has wrongfully attributed to "the judicial Abraham" a dictum which the sacred writer ascribes to Isaac (Genesis c. 27, v. 22) and with the same disregard of identity he refers to a previous controversy between different parties, as a determination of this case. In the former cause of which he speaks, neither the State of Maryland, nor William H. Baldwin, Jr., nor Summerfield Baldwin (the only parties to the present action), were parties; it is therefore not *res judicata* with respect to this contest, and the Court below has not so adjudged it nor so treated it. It was a case between different parties respecting a part only of the same taxes, and arose in a different tribunal and in a different way and for a different purpose. In the former suit there was no attempt to collect the taxes and

there was no adjudication that they were due or collectible. The non-resident guardian, learning that D. Frank Hull, or the County Commissioners of Washington County, were about to take some steps to collect a part of these taxes, filed a bill in equity (Printed Record, p. 27), wherein he prayed the Court merely that "the said County Commissioners of Washington County, and the said D. Frank Hull, collector as aforesaid, and each of them, may be enjoined and restrained from enforcing the collection of said taxes, and from taking any further proceedings at law for the collection of the same," and that it grant "the writ of injunction against the said County Commissioners of Washington County, and against the said D. Frank Hull, strictly prohibiting and restraining them, and each of them, from taking any or further proceedings for the collection of said taxes from the said William W. Baldwin, guardian of Columbus C. Baldwin."

The judgment in the said former suit was "that the bill of complaint in the above cause be and the same is hereby dismissed with costs" (Printed Record, p. 37). When the former suit came before this Court on writ of error, it was dismissed because no Federal question was specifically raised and because the decision of a question not Federal was sufficient to sustain the judgment (Baldwin, Guardian, agst. County Commissioners, 168 U. S., 705). The question not Federal which was determined was that "the guardian's own laches in respect to his duty cannot be made the basis of equitable correction on his own behalf" (STAKE, Equity Judge, Printed Record, p. 37). The same proposition was stated by the Court of Appeals of Maryland in its opinion in the former suit, as follows: "He could not remain passive until the authorities were about to enforce collection of taxes and then seek the aid of a court of equity" (Baldwin, Guardian, vs. County Commissioners, 85 Md., at p. 164).

It is demonstrated, therefore, that the former suit was between Baldwin, guardian, and the County Com-

missioners and the Collector of Taxes ; that the present suit is between the State of Maryland, the obligee of the guardian's bond, and Baldwin's sureties ; that in the former suit Baldwin was plaintiff and the officials were not moving against him ; that in the present suit the State is plaintiff and is seeking to enforce the payment of taxes ; that the former suit was entirely a suit for the restraint of the County Commissioners and Hull ; that the present suit is not a proceeding by Hull nor the County Commissioners (Opinion, Printed Record, pp. 43-45) ; that the former suit was in equity for an injunction only ; that the present suit is at law for the collection of money ; that relief in the former suit was denied in equity for laches of the suitor ; that in the present suit the sureties rely upon no equitable considerations, but depend absolutely upon their legal rights.

The former judgment therefore does not contain a single element entitling it to the force of *res judicata*. The Court of Appeals of Maryland has said : " The first question to be considered is whether the defendants, who are sureties on the bond, are responsible, *even conceding their principal to be so*. It will be admitted at the beginning of the discussion that it does not necessarily follow that sureties on a guardian's bond are liable because the Guardian is " (Opinion, Printed Record, p. 40).

The Court of Appeals, therefore, did not regard this question as *res judicata*, and its reference to its former opinion (which, it will be noted, is no part of the record) was simply for the purpose of avoiding the second discussion of a question of law, which it had so recently determined. Of course, the principle *stare decisis* would dictate that disposition of the question, but the fact that the former decision happened to be in a cause arising out of a part of the same taxes made it no more pertinent nor binding between the parties than if it had been rendered in any other cause involving the same principles of law. And no mere pre-

cedent of its own can justify the Court of Appeals in denying rights secured by the Constitution of the United States.

We have felt it incumbent upon us to explain what counsel for the defendant in error means when he refers to no federal question having been presented which had not been previously determined in the *same case*. The case is *not* the same case, and this Court has already judicially determined (168 U. S., 705) that *no* federal question was presented. His Point 1 is, therefore, entirely without merit, as is also his Point 5, which is substantially a reiteration of his Point 1.

II.

A FEDERAL QUESTION WAS INVOLVED; WAS PRESENTED FOR DECISION BY THE PLAINTIFFS IN ERROR TO BOTH COURTS BELOW; WAS NECESSARY TO THE DETERMINATION; WAS CONSIDERED, AND WAS DETERMINED ADVERSELY TO THE RIGHT, PRIVILEGE AND IMMUNITY SPECIALLY SET UP BY THE PLAINTIFFS IN ERROR UNDER THE FEDERAL CONSTITUTION.

A. THERE WAS A FEDERAL QUESTION.

This Court has repeatedly denied the power of a State to tax the absent property of non-residents.

The leading cases are:

NORTHERN CENTRAL RAILWAY CO. VS. JACKSON, 7 WALL., 262: Here the Northern Central Railway Co. sought to withhold from a bondholder a tax imposed by the State of Pennsylvania upon the coupons attached to the bonds and directed by the law of Pennsylvania to be deducted by the railway company from interest payments; the bonds were issued upon the credit of the line of road, partly in Maryland and partly in Pennsylvania; a portion of the pledged property lay in Maryland. NELSON, J., delivering the opinion of the Court, said:

> "Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction; * * * to permit the deduction of the tax from the coupons in question would be giving effect to the acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction."

CLEVELAND, PAINESVILLE AND ASHTABULA R. R. Co. vs. COMMONWEALTH OF PENNSYLVANIA, 15 Wall., 30 (State tax on foreign-held bonds): Here the railroad company, a corporation of Pennsylvania, and subject to its tax laws, was directed to deduct from interest payments on its bonds held and owned by non-residents, a tax assessed and levied upon the principal of the bonds by the State of Pennsylvania. The Court, FIELD, J., criticised the language of NELSON, J., in the last case cited above, but affirmed the principle of the decision, using the following words:

> "It was the fact that the *bonds were held by a non-resident*, which justified the language used, that to permit a deduction of the tax from the interest would be giving effect to the laws of Pennsylvania upon property beyond her jurisdiction, and not the fact assigned by the learned justice. The decision is, nevertheless, authority for the doctrine that property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised. *Indeed, it would seem that no adjudication should be necessary to establish so obvious a proposition.* The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property and business. Whatever form taxation may assume—whether

as duties, imposts, excises or licenses—it must relate to one of these subjects. It is not possible to conceive of any other, though, as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape—in its natural condition, in its manufactured form and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted—in professions, in commerce in manufacture and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State, as to the mode, form and extent of taxation, is unlimited where the subjects to which it applies are within her jurisdiction."

From the foregoing opinion it is clear that person, property or business within the State are jurisdictional facts, and that no tax can be laid where the presence of one or the other cannot be predicated. Applying the principles to the facts of the case, the Court said:

"We are clear that the tax cannot be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State."

NEW YORK, LAKE ERIE AND WESTERN R. R. Co. vs. COMMONWEALTH OF PENNSYLVANIA, 153 U. S., 628: Here the State of Pennsylvania sought to collect from a New York corporation taxes on bonds of the corporation held and owned by residents of Pennsylvania. The same general principle is enunciated again by the Court, through HARLAN, J., in these words:

"No principle is better settled than that the power of a State, even its power of taxation in

respect to property, is limited to such as is within its jurisdiction."

The same principles are stated in Tappan vs. Merchants' Bank, 19 Wall., 490; Gloucester Ferry Co. vs. Pennsylvania, 114 U. S,, at p. 208, and City of New Orleans vs. Stemple, Advance sheets U. S. Supreme Court, decided December 4, 1899.

This Court has also denied the power of a State to impose a personal liability for taxes upon a non-resident. Section 65 of the tax law attempted this.

See Dewey vs. Des Moines, 173 U. S., 193.

The plaintiffs in error vehemently contended that the exercise of the power through the tax laws in this case violated several provisions of the Federal Contitution, and this surely presented a Federal question.

B. THE FEDERAL QUESTION WAS ACTUALLY PRESENTED.

One cause of complaint by the defendants in error is, that it is presented in so many guises.

It is distinctly and specifically raised in no uncertain terms by

Pleas 13, 14, 15, 16, 17 (Printed Record, p. 9).
Additional Pleas, 19, 20, 21, 22, 23 (Printed Record, p. 14).
Bills of Exception 3d, 4th, 5th (Printed Record, p. 19-21).
Prayers 10, 11, 12, 13, 14, 15 (Printed Record, p. 23, 24).
Motion in Arrest of Judgment, 3d ground (Printed Record, p. 25).

C. THE FEDERAL QUESTION WAS NECESSARY TO THE DETERMINATION.

The declaration (Printed Record, p. 7) alleged that the taxes in suit were *duly levied and assessed;* that it was the guardian's duty to pay all State and county taxes *properly levied and assessed;* that the bondsmen bound themselves for the full and faithful performance

of all the duties imposed upon him by the *laws* of the State of Maryland, including the specific duty to pay taxes, and that he refuses to pay the said taxes.

The pleas set up the unconstitutionality under the Federal Constitution of the law of the State of Maryland under which the taxes were levied and assessed, in that it abridged the privilieges and immunities of citizens of the United States, and that it deprived citizens of the United States of property without due process of law, and that it denied to the defendants within the jurisdiction of the State of Maryland the equal protection of the laws, and that the law of said State regulating the returns of the Register of Wills on which the taxes were based, denied to citizens of the United States and of New York the privileges and immunities of citizens of Maryland, and deprived citizens of the United States of property without due process of law.

These pleas were demurred to (Printed Record, p. 11) and the demurrers sustained.

The defendants pleaded over, under leave of Court in different form, but the same substance and the plaintiff moved to strike the new pleas from the record. Its motion was granted (Printed Record, pp. 13, 14).

The defendants objected to the admission of evidence of the returns and taxes on substantially the same grounds, and the evidence was admitted and the defendants excepted (Printed Record, 19, 20, 21).

The defendants prayed for instructions on the law to substantially the same effect, and the prayers were rejected (Printed Record, p. 23) [as printed the prayers refer to the fifth prayer, whereas they should refer to the tenth prayer; this was a typographical error and was cured by the agreement of counsel to that effect (Printed Record, p. 38)].

The defendants moved in arrest of judgment on substantially the same grounds and the motion was denied (Printed Record, p. 25).

The defendant's counsel were criticised for raising the questions in so many ways. It would be farcical to say that these questions, so specifically presented and so consistently overruled, were not considered. It also passes the bounds of reason to conclude that these questions were not necessary to the determination; they were necessary to each determination that was made thereon in the course of the trial, and if any one of these propositions was sound it necessarily followed that the taxes were levied without warrant of law and were void, and that no cause of action therefor existed in favor of the State nor against the defendants.

We contend that, as the scheme devised by the Maryland law for the collection of taxes on the non-resident ward's estate was to levy the taxes on the absent property and then impose the liability to pay them on the guardian, at the same time reserving to him the right to reimburse himself out of his ward's property, this scheme was an unconstitutional method of enforcing payment of taxes out of the ward's estate; that the law directing it was unconstitutional, and could, therefore, impose no such liability on the guardian, and compliance with the law was no part of the guardian's lawful duty, and, therefore, no part of the bondsmen's undertaking, and that the unconstitutionality of the law can be urged as a defense, alike by ward, guardian and sureties; and that the sureties are as much entitled to raise the question and have it determined on its constitutional merits as the ward or guardian would be.

The defendants' undertaking was that the guardian should in all respects perform the duty of guardian according to *law* (Printed Record, p. 17).

See Wood vs. Fisk, 63 N. Y., 245.

The bondsmen have not been held to have contracted that the guardian would do anything that the Legislature might arbitrarily direct; they did not

contract that he would comply with everything having the form of law, but merely with everything having the force of law. And the Court of Appeals has not differently construed their contract.

The whole substantial question was whether the *law* imposed the duty, and that necessarily involved the determination that it was a valid law when its validity was so vehemently disputed. There could not possibly be any recovery under the declaration unless there was a valid tax, duly levied and assessed, under a valid law; and there was a verdict and judgment for the plaintiff (Printed Record, p. 14).

It is true that there were other questions raised such as no undertaking to pay taxes, limitations, and release and discharge, but the main question which was absolutely necessary to the foundation of the judgment was whether there was a valid tax duly levied and assessed under a valid law. Until this was determined in favor of the plaintiff, there was no need of discussing the other defenses, which consisted of matter of avoidance.

The defendants pleaded the constitutional rights secured to them and also to their principal; this was entirely permissible.

Hughart vs. Spratt, 78 Ky., 313.
Pillman vs. Schuyler, 4 Hun, 166.
Osborn vs. Roberts, 36 N. Y., 365.
Morse vs. Hovey, 9 Paige, 197.
Parshall vs. Lamoreaux, 37 Barb., 189.
Sawyer vs. Chambers, 43 Barb., 622.

The State had never established its right against the guardian, the state was no party to the former suit and was not bound thereby, a judgment in favor of the guardian in the former suit would not have prevented the state from suing as obligee of the bond, it was therefore open to the bondsmen to contest the guardian's liability, and to deny the validity of the law under which the state claimed the right.

D. THE FEDERAL QUESTION WAS CONSIDERED.

We have already shown that there was no way to avoid its consideration. The rulings on it presentation are each evidence of its consideration.

Counsel for the defendant in error shows on page 5 of his brief by his discussion under "4," that the question was considered below.

The Court of Appeals says: "The only other question that we need refer to, is the constitutionality of the tax, thus, levied on the property" (Printed record, p. 46). "We of course, do not question the decisions of the Supreme Court of the United States, cited by the appellant, as to the right of a State to tax property outside of the limits when the owner is beyond its jurisdiction, but we do not deem them applicable to this case" (Printed Record, p. 47).

The fact that the Court of Appeals did not deem that the cases cited were applicable to the case was merely an adverse determination of our contention that they were applicable. It should not preclude us from examining into whether they were right.

These quotations from the opinion show that the Court actually considered and passed adversely on the constitutional questions.

The ground of the Court's determination, as stated in the opinion, that they would not enter into an extended discussion of the constitutional questions attempted to be raised, because they had recently determined that the *situs* of the property was in Washington County (Printed Record, pp. 45, 47), and had no reason to change their views, was a determination of law and not of fact. They refer to their opinion in the case of Baldwin vs. County Commissioners, 85 Md., 145, as an expression of their present views. In that case they said (p. 155) that both guardian and ward were non-residents at the time of the levy and asment; that the property consisted of stocks and bonds of corporations organized and located outside of the State of Maryland, and that

the *situs* of property of this kind, for the purposes of taxation, is ordinarily at the domicile of the owner, but that the Legislature has the power to fix a different *situs*, provided, of course, there be no conflict with some provision of the Constitution (p. 156). They now have had their attention called specifically to the provisions of the Constitution, and they state that they have no reason to change their views. This certainly shows that they considered the constitutional questions.

In STATE TAX ON FOREIGN BONDS, 15 Wall., 300, the Supreme Court of Pennsylvania had determined that the *situs* of the property for the purposes of taxation was in Pennsylvania, but that did not prevent this Court from determining that it was not; the question of *situs* on undisputed facts was one of law and not of fact (See opinion of Mr. Justice FIELD, pp. 321 and 322).

E. THE FEDERAL QUESTION WAS DETERMINED ADVERSELY TO THE RIGHT, PRIVILEGE AND IMMUNITY SPECIALLY SET UP BY THE PLAINTIFFS IN ERROR UNDER THE FEDERAL CONSTITUTION.

This follows from C above. The Trial Court overruled every objection interposed on constitutional grounds, and the Court of Appeals decided that the Legislature had the power, notwithstanding these constitutional questions, to tax the property in question, though actually absent from the State, because the Legislature had given it an artificial *situs*.

The two cases of Baldwin vs. County Commissioners and State vs. Baldwin are without precedent, and they certainly determine that if property devolves on an infant non-resident the State continues to have a vested right, indefeasible without its consent, to tax the infant's property during his minority and after his majority until his guardian settles a final account, though the property be located outside of the State, and this because, for purposes of taxation, a State

Legislature may fix an artificial *situs* for the non-resident infant's property and may, for taxation, regard the infant's guardian as an artificial being residing at the place of his appointment, and may impose a personal liability on him for taxes though his actual residence be outside the State.

After reading the two opinions of the Court of Appeals it cannot reasonably be contended that the determination of this present cause involved simply a question of State law. The issue of unconstitutionality was squarely presented and it was squarely decided.

III.

THIS COURT HAS JURISDICTION, AND SHOULD DISMISS THE MOTION.

This follows from Points I. and II.

Respectfully submitted,

CHARLES A. BOSTON,

Counsel for Plaintiff in Error.

Supreme Court, U.S.
FILED
NOV 8 1900
JAMES H. MCKENNEY,
CLERK.

No. 113.

Bf. of Boston for P. E.

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed Nov. 8, 1900.

WILLIAM HENRY BALDWIN, Jr., and SUMMERFIELD BALDWIN,

Plaintiffs in Error,

vs.

THE STATE OF MARYLAND, to the use of D. FRANK HULL, Collector of State and County Taxes for Washington County, Maryland,

Defendant in Error.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

Brief for Plaintiffs in Error.

CHARLES A. BOSTON,
Counsel for Plaintiffs in Error.

G. G. Shipperlee, Printer and Custom Binder, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 113.

WM. HENRY BALDWIN, JR., AND SUMMERFIELD BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, TO THE USE OF D. FRANK HULL, COLLECTOR OF STATE AND COUNTY TAXES FOR WASHINGTON COUNTY, MARYLAND, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

This writ of error presents the question whether the State of Maryland can constitutionally tax the absent property of a non-resident adult, and collect the tax by the present suit.

The facts were all agreed on by the attorneys for the parties (Printed Record, pp. 15, 17, and Exhibit 1, p. 27).

In short, the case is as follows: Two certain residents of Washington County, Maryland, died prior to 1880 leaving personal property which devolved on one Columbus C. Baldwin, a citizen and resident of New York, and a non-resident of Maryland, who, in 1880, was an infant. The property was distributed to a guardian of the estate of said infant, appointed to receive it by the Orphans' Court of Washington County in Maryland. In August, 1891, one William Woodward Baldwin, a citizen and resident of New York and a non-resident of Maryland, was appointed by said Orphans' Court the guardian of the said estate of said infant, and gave bond *to perform the duty of guardian to said Columbus C. Baldwin according to law* (Exh. 2, Record, p. 17), and entered upon the performance of his said duties. He received the property, consisting wholly of stocks and bonds of corporations organized and located outside of the State of Maryland; took the certificates of stock and the bonds into his custody, and removed them from Maryland into New York, the residence of himself and his ward. His ward arrived at the full age of 21 years on the 6th day of January, 1893, and authorized the said William Woodward Baldwin to continue the collection of his income and the management of his estate. At this time and at all times subsequently-including those covered by this suit, the property, consisting of stocks and bonds of corporations foreign to the State of Maryland, was physically (the certificates of stock and the bonds) located in New York and not in Maryland, and both Columbus C. Baldwin and William Woodward Baldwin were citizens and residents of New York and non-residents of Maryland. In the years 1893, 1894 and 1895, subsequent to the arrival of Columbus C. Baldwin at full age, the State of Maryland levied and assessed State and county taxes on said property. There being no property in the State out of which the taxes could be collected, and no person in the State directly responsible, the State, through its

tax collector, one Hull, undertook to collect the taxes by suing in its own name to the use of Hull the bondsmen of Wm. Woodward Baldwin.

The bondsmen defended on the ground that the laws of Maryland by virtue of which the said property was levied and assessed were unconstitutional and void under the Federal Constitution, alleging that they deprived them, and those for whom they stood sureties, of property without due process of law; that they deprived them of the privileges and immunities of citizens of the United States, and that they deprived them of the equal protection of the laws.

These defenses were appropriately raised at every stage of the suit distinctly. They were embraced in pleas, specific objections to the admission of evidence and exceptions, prayers and motion in arrest of judgment (see our brief in opposition to motion to dismiss, p. 14). The defenses were uniformly overruled and judgment for the amount of the taxes, with interest and costs, was given against the bondsmen, who appealed to the Court of Appeals of Maryland, where the judgment of the trial Court was affirmed. The bondsmen now bring this writ of error and present the Federal questions here.

The Court of Appeals of Maryland, in its opinion (Printed Record, p. 39), justified the judgment distinctly on the ground that under the statutes of the State the *situs* of the property was in Washington County, Maryland, and absence of the property from the State and non-residence of both guardian and ward did not relieve the guardian from payment of taxes, though the ward was of full age when they were levied and assessed.

The defendant in error has moved to dismiss the writ of error, and briefs on the motion have heretofore been submitted by counsel for both parties. The Court has considered the motion and has postponed its further consideration to the argument on the merits. Argument on the jurisdiction of this Court will be

found in the said brief for the plaintiffs in error in opposition to said motion.

[This case was No. 367, October Term, 1899, and the former brief is so numbered.]

ASSIGNMENT OF ERRORS--NOW RELIED ON.

In our brief in opposition to the motion to dismiss, at page 4, to which we refer, we set these forth at length. We now rely especially on the following:

> 2. "That the law of the State of Maryland whereby and whereunder the said alleged taxes were levied and assessed, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with the fourteenth amendment of the Constitution of the United States, inasmuch as said law so expounded deprives the said appellants and the said William Woodward Baldwin and Columbus Calvert Baldwin, severally citizens of the United States and within its jurisdiction, and each of them, of property without due process of law, and contrary to the fourteenth amendment of the Constitution of the United States."
>
> 5. "That the law of the State of Maryland, whereby and whereunder the said alleged returns of the register of Wills of Washington county aforesaid were directed to be made and were made, as expounded by the judgment of the Court of Appeals of Maryland, is in conflict with the fourteenth amendment to the Constitution of the United States, inasmuch as said law so expounded deprives the appellants and each of them, and the said William Woodward Baldwin and Columbus Calvert Baldwin, severally citizens of the United States and within its jurisdiction, of property without due process of law."
>
> 6. "That by the record and proceedings aforesaid it appears that the judgment aforesaid was given for the appellee against the appellants;

"Whereas, by the supreme law of the land, as embodied in the Constitution of the United States, the said judgment ought to have been given for the said appellants against the appellee."

POINTS.

In the brief already submitted for the plaintiffs in error in opposition to the motion to dismiss, the following propositions are fully argued, and reference is hereby made to the said brief, which we understand will be considered on this argument:

The plaintiffs in error maintain:

I. That the questions presented by the assignment of errors are open for determination.

II. That a Federal question was involved, was specially presented by them for decision to both Courts below, was necessary to the determination of the case, and was considered and determined adversely.

III. That this Court has jurisdiction, and should therefore dismiss the motion.

We now present the additional proposition that

IV. THE LAWS OF THE STATE OF MARYLAND AUTHORIZING AND DIRECTING THE LEVY AND ASSESSMENT OF THESE TAXES ARE UNCONSTITUTIONAL AND VOID BY REASON OF CONFLICT WITH THE CONSTITUTION OF THE UNITED STATES; IT WAS NOT THE LAWFUL DUTY OF WILLIAM WOODWARD BALDWIN TO PAY THE UNCONSTITUTIONAL TAXES; HIS BONDSMEN DID NOT UNDERTAKE THAT HE SHOULD PAY THEM, AND THE ENFORCEMENT OF THE COLLEC-

TION FROM THE BONDSMEN WAS A VIOLATION OF RIGHTS SECURED TO THEM BY THE FEDERAL CONSTITUTION.

It will be noted that this is a direct attempt to collect the taxes from the bondsmen, that no previous adjudication for their collection has been obtained against guardian or ward, that no property has been levied on, and that the sole ground of recovery is that it was the lawful duty of the non-resident guardian appointed for an infant by a local Court to pay taxes on absent property of his non-resident ward after the ward's arrival at full age, and that the bondsmen are responsible for their absent principal, against whom, in his residence, no process of the State could run. It will also be noted that no actual notice of the levy and assessment was given, and that no actual notice was required or provided by the law of Maryland.

STATUTE LAW OF MARYLAND.

The tax law involved is as follows :
Code of Public General Laws, Art. 81 :

SEC. 9. "The *several registers of Wills* in this State *shall annually*, on or before the first day of March, *return to the county commissioners* or appeal tax court *a summary account of all property* that shall appear by the records of the several orphans' courts to be *in the hands of each* executor, administrator or *guardian* as such ; and all such property, if not before assessed, shall then be assessed ; and every executor, administrator or guardian shall be liable to pay the taxes levied thereon, and shall be allowed therefor by the orphans' court in his accounts."

SEC. 65. "Administrators shall pay all taxes due from their decedents as preferred debts, and to the exclusion of all others, except the necessary funeral expenses ; and, on failure, their bonds shall

be put in suit for the use of the State, and recovery had for the whole amount of taxes due, and interest from the time they were payable; this section shall also apply to guardians for taxes upon property in their hands as such."

The appointment of the guardian was under Maryland Code of Public General Laws, Art. 81, Sec. 203:

"In case any non-resident infant shall be entitled to any property, real or personal, in this State, and shall have no guardian or guardians in the place of the residence of the said infant, duly qualified and who shall have given bond with sufficient security for the performance of his trust, it shall be lawful for the orphans' court of the city or county in which the said property of the said infant may be, or where the debt or chose in action due to the said infant may be recoverable, to appoint a guardian or guardians over the property or claim of such infant, which said guardian or guardians shall give bond with security in the same manner as if such infant resided in this State."

The bond was given pursuant to Article 93, Code Public General Laws, Section 155:

"Every guardian appointed by the court, and every guardian by will, or natural guardian, before he proceeds to act as such, shall enter into bond to the State of Maryland in such penalties and with such sureties as the court shall approve, and to be recorded and be subject to be put in suit, and to be in all respects on a footing with an administration bond, with the following condition:

" 'The condition of the above obligation is such, that if the above bounden , as guardian to , of county,

shall faithfully account with the Orphans' Court of county, as directed by law, for the management of the property and estate of the infant under his care, and shall also deliver up the said property agreeably to the order of the said court or the directions of law, and shall in all respects perform the duty of guardian to the said according to law, then the above obligation shall cease; it shall otherwise remain in full force and virtue in law;' and the said bond shall be liable for the proceeds of sales of the real estate of his ward which shall come into his possession as well as for other property."

Argument.

These bondsmen are sued on a contract which engages them to answer for the performance of the duty of the guardian *according to law;* this contract does not refer to any arbitrary legislation which the State of Maryland may chose to enact, but to any law which in its sovereign capacity but as a member of the Federal Union it may constitutionally enforce.

The Constitution of the United States is the *supreme* law of the land and if any statutory regulation in Maryland conflicts with this the statute is not *law*, and it is no part of the duty of the guardian to comply with it; "according to law" in the contract means "according to law," considering the Constitution of the United States as the supreme law.

THE SCHEME OF TAXATION OF THIS PROPERTY DEVISED BY THE LAWS OF MARYLAND WAS IN CONFLICT WITH THE FEDERAL CONSTITUTION.

The property was absent, the owner was absent, the custodian was absent, the principal was not the lawful custodian by virtue of his guardianship, but by virtue of an agreement between him and the adult owner (Printed Record, p. 16).

This property not being within the State, and therefore not within reach, it was assessed by virtue of a special provision applicable to property, *not actually in the hands of guardians as such*, but *which shall appear by the records of the Orphans' Court* to be in the hands of the guardian as such (Sec. 9, *supra*).

This statute does not by its terms provide for any notice, and it makes the records of the Orphans' Court the basis of taxation, and requires *all* such property to be assessed. If the property appears by the records of the Orphans' Court to be in the hands of the guardian it becomes assessable under this statute. Whether inside or outside of the State, whether the property of infant or adult, whether belonging to resident or non-resident, the sole basis of taxation is the appearance of the records of the Orphans' Court.

The Court of Appeals, in its opinion, says :

> " The only other question that we need refer to, is the constitutionality of the tax, thus, levied on the property " (Printed Record, p. 46). " We of course, do not question the decisions of the Supreme Court of the United States, cited by the appellant, as to the right of a State to tax property outside of the limits when the owner is beyond its jurisdiction, but we do not deem them applicable to this case " (Printed Record, p. 47).

The fact that the Court of Appeals did not deem that the cases cited were applicable to the case was merely an adverse determination of our contention that they were applicable. It should not preclude us from examining into whether they were right.

The ground of the Court's determination, as stated in the opinion, that they would not enter into an extended discussion of the constitutional questions attempted to be raised, because they had recently determined that the *situs* of the property was in Washington County (Printed Record, pp. 45, 47), and had no

reason to change their views, was a determination of law and not of fact. They refer to their opinion in the case of Baldwin vs. County Commissioners, 85 Md., 145, as an expression of their present views. In that case they said (p. 155) that both guardian and ward were non-residents at the time of the levy and assessment; that the property consisted of stocks and bonds of corporations organized and located outside of the State of Maryland, and that the *situs* of property of this kind, for the purposes of taxation, is ordinarily at the domicile of the owner, but that the Legislature has the power to fix a different *situs*, provided, of course, there be no conflict with some provision of the Constitution (p. 156). They now have had their attention called specifically to the provisions of the Constitution, and they state that they have no reason to change their views.

ABSENT PROPERTY OF A NON-RESIDENT IS NOT TAXABLE.

THE STATE OF MARYLAND, under the repeated decisions of this Court, could not lawfully tax the absent property of a non-resident.

The leading cases are:

NORTHERN CENTRAL RAILWAY CO. VS. JACKSON, 7 WALL., 262: Here the Northern Central Railway Co. sought to withhold from a bondholder a tax imposed by the State of Pennsylvania upon the coupons attached to the bonds and directed by the law of Pennsylvania to be deducted by the railway company from interest payments; the bonds were issued upon the credit of the line of road, partly in Maryland and partly in Pennsylvania; a portion of the pledged property lay in Maryland. NELSON, J., delivering the opinion of the Court, said:

> "Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is

taxing property and interests beyond her jurisdiction ; * * * to permit the deduction of the tax from the coupons in question would be giving effect to the acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction."

CLEVELAND, PAINESVILLE AND ASHTABULA R. R. Co. vs. COMMONWEALTH OF PENNSYLVANIA, 15 Wall., 300 (State tax on foreign-held bonds): Here the railroad company, a corporation of Pennsylvania, and subject to its tax laws, was directed to deduct from interest payments on its bonds held and owned by non-residents, a tax assessed and levied upon the principal of the bonds by the State of Pennsylvania. The Court, FIELD, J., criticised the language of NELSON, J., in the last case cited above, but affirmed the principle of the decision, using the following words :

" It was the fact that the *bonds were held by a non-resident*, which justified the language used, that to permit a deduction of the tax from the interest would be giving effect to the laws of Pennsylvania upon property beyond her jurisdiction, and not the fact assigned by the learned Justice. The decision is, nevertheless, authority for the doctrine that property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised. *Indeed, it would seem that no adjudication should be necessary to establish so obvious a proposition.* The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property and business. Whatever form taxation may assume—whether as duties, imposts, excises or licenses—it must relate to one of these subjects. It is not possible to conceive of any other, though, as applied to them,

> the taxation may be exercised in a great variety of ways. It may touch property in every shape—in its natural condition, in its manufactured form and in its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted—in professions, in commerce in manufacture and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State, as to the mode, form and extent of taxation, is unlimited where the subjects to which it applies are within her jurisdiction."

From the foregoing opinion it is clear that person, property or business within the State are jurisdictional facts, and that no tax can be laid where the presence of one or the other cannot be predicated. Applying the principles to the facts of the case, the Court said:

> "We are clear that the tax cannot be sustained; that the bonds, being held by non-residents of the State, are only property in their hands, and that they are thus beyond the jurisdiction of the taxing power of the State."

NEW YORK, LAKE ERIE AND WESTERN R. R. CO. vs. COMMONWEALTH OF PENNSYLVANIA, 153 U. S., 628: Here the State of Pennsylvania sought to collect from a New York corporation taxes on bonds of the corporation held and owned by residents of Pennsylvania. The same general principle is enunciated again by the Court, through HARLAN, J., in these words:

> "No principle is better settled than that the power of a State, even its power of taxation in respect to property, is limited to such as is within its jurisdiction."

In City of St. Louis vs. The Wiggins Ferry Company, 11 Wall., 423, Mr. Justice SWAYNE said:

> "Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limit and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action."

The same principles are stated in Tappan vs. Merchants' Bank, 19 Wall., 490; Gloucester Ferry Co. vs. Pennsylvania, 114 U. S., at p. 208, and City of New Orleans vs. Stemple. Advance sheets U. S. Supreme Court, decided December 4, 1899.

This Court has also denied the power of a State to impose a personal liability for taxes upon a non-resident. Section 65 of the tax law attempted this.

See Dewey vs. Des Moines, 173 U. S., 193, where Mr. Justice PECKHAM said:

> "The State may provide for the sale of the property upon which the assessment is laid, but it cannot under any guise or pretense proceed farther and impose a personal liability upon a non-resident to pay the assessment or any part of it. To enforce an assessment of such a nature against a non-resident, so far as his personal liability is concerned, would amount to the taking of property without due process of law, and would be a violation of the Federal Constitution."

The numerous cases in which the principles of these

decisions have been cited and applied will be found collected in

6 Rose, Notes on U. S. Reports, 970 *et seq.*
7 Rose, Notes on U. S. Reports, 892 *et seq.*
8 Rose, Notes on U. S. Reports, 259 *et seq.*

The Court of Appeals of Maryland has sustained the power of the State to levy and collect the taxes upon the proposition expressed in its opinion (on printed p. 47) in the following words: "In contemplation of law, the personal property remains in the county where the guardian was appointed."

The Property Taxed Was Absent Property of a Non-Resident.

It must be remembered that this property was the property of the ward, and that the ward had arrived at full age; that the property was actually, by every conception of law, located in New York State, and that, under the cases just cited, it is only taxable where it is or where the owner is, and that any other contemplation of law is a fiction and a device for taxing property over which the State has no jurisdiction.

Now, the Court of Appeals sought to distinguish the Federal cases above cited as inapplicable, on the ground that in the present case the property taxed was taxable property, because the Legislature had fixed its *situs* in Maryland, but we respectfully urge that this does not avoid nor answer the question: *Was its situs actually in Maryland?*

We contend that, on the facts, the question of *situs* is one of law.

In State Tax on Foreign Bonds, 15 Wall., 300, the Supreme Court of Pennsylvania had determined that the *situs* of the property for the purposes of taxation was in Pennsylvania, but that did not prevent this Court from determining that it was not; the question of *situs* on undisputed facts was one of law and not of fact (See opinion of Mr. Justice Field, pp. 321 and 322).

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There are a few additional considerations which seem to us to throw some light on the constitutional soundness of the proposition advanced by the Court of Appeals that this property was taxable in Washington County because its *situs* was there.

Let us consider what was taxed: It was the *property*, because under Section 65, already quoted, the guardian is allowable in his accounts on settlement with the ward for taxes paid, while Section 9 specifically declares "*such property*" to be taxable.

Under the principles laid down in the opinion of Mr. Chief-Justice FULLER in Pollock vs. Farmers' Loan and Trust Co., 157 U. S., at 581 *et seq.*, the tax payable by the guardian is a tax on the ward's property, the variation of the form not being a variance of the substance.

In United States vs. Baltimore and Ohio Railroad Company, 17 Wall., 322, Mr. Chief-Justice HUNT said:

> "A tax is understood to be a charge, a pecuniary burden, for the support of Government. Of all burdens imposed upon mankind that of grinding taxation is the most cruel. It is not taxation that Government should take from one the profits and gains of another. That is taxation which compels one to pay for the support of the Government from his own gains and of his own property.
>
> "In the cases we are considering the Corporation parts not with a farthing of its own property. Whatever sums it pays to the Government is the property of another. Whether the tax is five per cent. on the dividend or interest or whether it be fifty per cent. the Corporation is neither richer or poorer. Whatever it thus pays to the Government it by law withholds from the creditor. If no tax exists, it pays seven per cent., or whatever be its rate of interest, to its creditor in one unbroken sum. If there be a tax it pays ex-

actly the same sum to its creditor, less five per cent. thereof, and this five per cent. it pays to the Government. The Receivers may be two, or the Receiver may be one, but the payer pays the same amount in either event. It is no pecuniary burden upon the Corporation, and no taxation of the Corporation. The burden falls on the creditor. He is the party taxed."

The method of taxation adopted was, therefore, under the decisions above cited, merely a convenient mode of collecting a tax from Columbus C. Baldwin, an adult resident of New York on New York property.

All constitutional taxes must be based on presence of property, presence of its owner, or the use of a privilege. If either of these bases exists, the State may lawfully tax. The law itself taxes the *property*, and the Court of Appeals has determined the *property* to be taxable; while the owner is not within the State and there is no pretense that the tax was a privilege tax; so we may safely consider that this tax is justified by its advocates simply on the ground that it is a tax on *property*, which for the purposes of taxation is within reach of the State of Maryland.

But what is the property? It is stocks and bonds of foreign corporations, and, therefore, not by virtue of any corporate peculiarities amenable to the State of Maryland. The bonds are debts taxable in the hands of their holders (State Tax on Foreign Held Bonds, 15 Wall., 300). Whose is the property? It is actually outside of the State of Maryland; it is owned by an adult resident of the State of New York. Considered as *property*, how can the State of Maryland tax it? What right has the guardian with respect to it? Who is entitled to it? The property clearly belonged to Columbus C. Baldwin, a resident of New York, and it was, in fact, in New York. His legal rights with respect to it were all those of owner. Even the Courts of Maryland admit this.

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In Green vs. Johnson, 3 G. & J., at p. 395, DORSEY, J., said:

> "As soon as a trust ceases to be a subsisting trust or expires by its own limitation, or is put an end to by the act of the parties, if it be a fit subject for a suit at law a cause of action arises and the statute of limitations begins to run. The moment a ward is emancipated from the authority of his guardian by reaching the age prescribed by law his cause of action is complete. The relation which existed between them ceases to be a subsisting trust; an action of account may be immediately instituted in a court of law, and from that time the act of limitation dates the commencement of its operation."

And in State use of Henderson vs. Henderson, 54 Md., at p. 344, IRVING, J., said:

> "From the moment the ward reaches the age when the law makes him free, what the guardian owes the ward becomes a debt for which he may immediately sue. All money due him and property belonging to him are from that moment legally demandable, and he may sue the guardian on his bond for its payment and delivery."

The emancipation spoken of takes place when the ward reaches the age of twenty-one.

Md. Code of Public General Laws, Art. 81, S. 144.

> "Whenever land shall descend or be devised to a male under the age of twenty-one years, or to a female under the age of eighteen years, or any such male or female shall be entitled to a distributive share of the personal estate of an intestate, or to a legacy or bequest under a last will or codicil, or may acquire any real or personal property or estate

by gift or by purchase, and the said male or female shall not have a guardian appointed by last will and testament, agreeably to law, the Orphans' Court of the county in which such infant shall reside shall have power to appoint a guardian to such infant UNTIL THE AGE OF TWENTY-ONE YEARS IF A MALE, and until the age of eighteen if a female or married."

While the property is the ward's from the beginning, it is rightfully in the custody of the guardian until the ward arrives at age; but thereafter, immediately, whether there is an account or not, both the title and right to possession belong to the ward, and he may maintain an action for the property *in specie* or against the guadian for an accounting, and is, therefore, not dependent upon the Orphans' Court of Washington County for the protection of his rights.

State use of Henderson vs. Henderson, 54 Md., 354.
Green vs. Johnson, 3 G. & J., 396.
State vs. Murray, 24 Md., 310.
Slusher vs. Hammond (Iowa), 63 N. W. Rep., 185.
Reeve, Domestic Relations, 4th Ed., p. 399.
Schouler, Domestic Relations, S. 311, 3d Ed.
9 Am. & Eng. Enc. of Law, 148, 1st Ed.

The guardian may have certain duties to perform in view of his office as guardian, but those duties do not in any respect change the actual fact that the property was the property of Columbus C. Baldwin, a resident of New York, and that, considered from the standpoint of its location and its ownership, it was New York property, and *as property* not taxable in the State of Maryland.

THE CASE IS WITHOUT PRECEDENT.

Another sidelight on the proposition is that the two cases of *Baldwin vs. County Commissioners*, 85 Md., and the present case, stand alone. No authorities on taxation which we have found sustain them.

See

Cooley, Taxation, second Ed., p. 377.
Dallinger vs. Rapello, 14 Fed. Rep., 32.
25 Am. & Eng. Enc. Law, 129.
Trustees of the Academy of Richmond County vs. City Council of Augusta, 20 Lawyers' Reports Annotated, 151, note.

Substantially the same proposition was presented in City of Augusta vs. Kimball, 91 Me., 605 (June 17, 1898) (41 L. R. A., 475), and decided in conformity with with our contention. We refer especially to the opinion of that Court (EMERY, J.) as aptly stating and sustaining by its argument our position here.

THERE WAS NO NOTICE OR OPPORTUNITY TO BE HEARD.

The Court of Appeals in its opinion indicates that the only notice required by the law to be given is in case of an increase of assessment, or adding new property (Printed Record, p. 46), but it is not contended that this was a case of an increase of assessment or the adding of new property; on the contrary, it was the assessment of property outside of the jurisdiction; it may not have been added nor its assessment increased; in fact, there is no ground for contending that it fell under either of these two heads. Except for this notice, the law provides no other notice, but enables the officers to act direct on the returns of the Register of Wills.

There was in fact no notice of the assessment. The principal, being a nonresident and not having property within the State, was not chargeable with notice of the statute law concerning taxation.

The cases in this Court on the subject of notice of taxation are collated in MERCHANTS' AND MANUFACTURERS' NATIONAL BANK VS. PENNSYLVANIA, decided May 24, 1897, in which it is stated that statutory notice of *time* and *place* of assessment with a right to be heard before the assessing officer is *due process of law*. It would follow that absence of the right is not *due process of law*.

In a note to HAGAR VS. RECLAMATION DISTRICT, No. 108, 111 U. S., 701, Mr. Justice FIELD has collated the leading decisions upon the necessity of notice and an opportunity to be heard, and this Court undoubtedly agrees with the cases cited upon the necessity of notice and an opportunity to be heard to constitute taxation due process of law.

So this case presents the picture of two non-residents, taxed on absent property, by legislative fiction, without any previous notice or any hearing, or right to a hearing, before any tribunal whatsoever, empowered to give ear to their particular objection—namely, that the property shown on the records of the Orphans', Court is not taxable in Washington County, nor in Maryland. The law (Sec. 9) settles that fact arbitrarily and absolutely, and ascertains the amount subject to tax with equal rigidity and absoluteness; and the tax, when paid, is allowed to the guardian out of the ward's property.

This procedure is contrary to the leading cases of:

The Railroad Tax Case, 13 Fed. Rep., 751.
Stuart vs. Palmer, 74 N. Y., 188.
Scott vs. Toledo, 36 Fed. Rep., 385.
Hagar vs. Reclamation District, 111 U. S., 701, note.

Undoubtedly some reference will be made now by the defendant in error to the fact that the Court of Appeals in a previous case involving the taxation of this same property determined as matter of law that this property was taxable in the State, but that determination was not *res judicata* in this action; the

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former action was not between the same parties; it was a suit for injunction to restrain the collection; the decree was merely a decree of dismissal, and whatever was said in the opinion concerning the reason for dismissal was matter of law and not of fact. The former case came to this Court and the appeal was dismissed for want of jurisdiction, but that does not preclude the Court from now examining the questions of law when they are properly presented in a suit for a different purpose between parties, both of whom were not parties to the former action. This question is fully discussed in our brief in opposition to dismissal of the present Suit, page 8, *et. seq.*, to which we now refer.

Conclusion.

We maintain that

A. The law failed to provide for any notice, or hearing, that there was no actual notice, that the plaintiffs in error being made answerable for taxes, levied solely on the appearances of the books of the Register of Wills, are deprived of property without due process of law, and

B. The State of Maryland by the law in question as interpreted by the Court of Appeals has taxed property entirely outside its jurisdiction; that such law for that reason deprives the plaintiffs in error of property without due process of law.

We respectfully submit that the judgment should be reversed.

CHARLES A. BOSTON,
Counsel for Plaintiffs in Error.

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JAMES H. MCKENNEY,
Clerk.

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Brf. of Douglas for D. Cts (Conc)

Filed April 30, 1900

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 307.

WILLIAM HENRY BALDWIN, ETAL, PLAINTIFFS IN ERROR,

vs.

STATE OF MARYLAND, USE OF H. FRANK HULL, COLLECTOR, &c.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

On Motion to Dismiss for Want of Jurisdiction.

H. L. RIED DOUGLAS,

Counsel for Defendant in Error.

MAIL PUBLISHING CO., PRINTERS, HAGERSTOWN, MD.

IN THE

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OCTOBER TERM, 1899.

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WILLIAM HENRY BALDWIN, ET AL, PLAINTIFF IN ERROR.

vs.

STATE OF MARYLAND, USE OF D. FRANK HULL, COLLECTOR, &c

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

OF DEFENDANT IN ERROR.

ON MOTION TO DISMISS FOR WANT OF JURISDICTION.

In November, 1879, Christopher C. Baldwin was appointed guardian of Columbus C. Baldwin by the Orphans Court of Washington County, Maryland. He received, as guardian, large sums of money as his ward's distributive share of the estates of James Dixon Roman, the ward's grandfather, and Louisa M. Roman, his grandmother, both of whom lived and died in Washington County, where their estates were settled in the same Orphans' Court. Christopher C. Baldwin settled his

guardian accounts regularly in that Court up to 1884, when he resigned and was succeeded by R. W. Baldwin, who settled six accounts and then died. W. W. Baldwin was appointed guardian in place of the deceased in 1891, and settled a number of accounts. He, like his predecessor, Christopher and the ward Columbus, was and is a resident of New York City, and the ward became of age there in 1893. During the years mentioned the Register of Wills of Washington County, Maryland, made the annual returns he is required to make to the County Commissioners, taxes were levied against the estate in hands of said guardians, upon these returns, and duly paid up to the year 1893 The property taxed consisted of stocks and bonds of corporations located outside of the State of Maryland.

This guardian settled no account after 1892 until Feb. 15, 1895, when he settled his 2nd account, showing a balance due his ward of $63,381.56, but still did not settle a final account.

On February 12, 1895, the said W. W. Baldwin, as guardian, filed a bill in the Circuit Court for Washington County, Maryland, on the Equity side seeking to restrain the collection of the taxes for 1893 and 1894, then due. Upon hearing, the judgment of the Circuit Court was against him, this Bill was dismissed. He appealed to the Court of Appeals of Maryland and the judgment of the Circuit Court was affirmed. He took the case up on *writ of error* to the Supreme Court of the United States (No. 370 October Term, 1897) and the writ of error was dismissed for want of jurisdiction.

This reasonable termination of the case did not terminate it. The guardian would not pay the taxes, nor would he come within the jurisdiction of our Circuit Court. His bondsmen, the plaintiffs in error (those living) refused to pay and the Collector of taxes was com-

pelled to pursue them by suit in Baltimere City, including in his suit the additional taxes for 1895, which were in the same position. Before he could obtain a simple judgment against the guardian's bond for taxes, decreed by the highest court in the State to be due and collectable, the defendant in error was obliged to contend against 27 pleas, 23 additional pleas, 15 prayers, 5 bills of exceptions and 1 motion in arrest of judgment; the attorneys for the Baldwins evidently forgetting that Methuselah's longevity and Job's patience had not survived to these days. Little wonder that the Court of Appeals of Maryland, with a tired feeling, says in its opinion—"Fortunately it does not often occur (we know of no such case in this State at least) that a guardian after going into Court for the purpose of testing the validity of taxes imposed upon property in his hands, and after the question is settled against his contention by the Appellate Court of the State, will still undertake to avoid the payment of them."

But the State obtained judgment, at last, in the Superior Court of Baltimore City, it taking one year and two months to get it The defendants again took the case to the Court of Appeals, which speedily disposed of it by affirming the judgment below. With an indomitable perseverance worthy of a better cause the same case, virtually, is in this Honorable Court again, and again the defendant in error moves to dismiss it for want of jurisdiction.

It is the same case. There is an attempt on the part of the real Plaintiff in error to cover his hand so as to resemble that of the ingenous Esau, but his voice is that of the same old tax-dodging Jacob. The modern judicial Abraham is not, however, so easily fooled!

POINTS.

The defendant in error, upon the motion to dismiss, submits.

1. That no Federal question was presented for decision to the Courts below which had not previously been determined in the same case.

2. That no Federal question was involved.

3. That the discussion of no Federal question was necessary to the determination of the case.

4. That no Federal question was decided or considered by the State Courts, but this case was determined and considered upon other and different grounds.

5. That any question of real contention had already been determined and considered by the Court of Appeals of Maryland in the same case previously (Baldwin vs. Washington County 85, Md., 145) from which this Court has said there was no appeal and that the time has arrived when there should be an end of such litigation.

An examination of the opinion of the Court of Appeals delivered by Judge Boyd who also delivered the opinion of the Court in Baldwin vs Washington County, (85 Md. 145) will show what was considered by that Court as the questions necessary to decide the whole case not withstanding the half-hundred pleas and fifteen prayers of the plaintiffs in error.

After referring to and reaffirming their opinion in Baldwin vs. Washington County, in which they had decided (a) that the property in the hands of the guardian, (stocks and bonds) were for the purposes of taxation located in Washington County; (b) that the fact that the guardian and ward were non-residents of the State did not relieve the guardian from the payment of taxes; and (c) the fact that the taxes were levied after the ward became of age—no final account having been settled in

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the Orphans' Court—did not relieve him from their payment; the Court of Appeals proceeds to decide in this case

1. That the defendants, the sureties on the guardian's bond, are responsible for his failure to pay the taxes levied; (not a Federal question.)

2. That the suit on the bond was properly brought in the name of the State for the use of Hull, Collector; (not a Federal question.)

3. That the limitation to actions prescribed by Art. 81, Sec. 83 of the Code of Maryland cannot be applied to this suit; (no Federal question.)

4. "The only other question we need refer to is the constitutionality of the tax thus levied on the property. Having determined in the case of Baldwin vs. Washington County that the situs of the property was in that county, we do not propose to enter into an extended discussion of the constitutional questions attempted to be raised. We will, however, correct some erroneous conclusions that the counsel for the appellants seem to have reached in reference to our statutes."

* * * * * * *

"The property reported to the County Commissioners by the Register of Wills is only assessed, if not before assessed, and as we intimated in Baldwin vs. Washington County, the provision only applies to property that is taxable under the laws of the State. There is no discrimination whatever against infants or their guardians, but they are only bound to pay taxes as others do—no more, and, so far as the law can prevent it, no less. If the guardian attends to his duties there is no possible danger of any unjust assessment against his ward."

"We of course do not question the decisions of the Supreme Court of the United States, cited by the appellant as to the right of a State to tax property outside of

its limits when the owner is beyond its jurisdiction, but we do not deem them applicable to this case. In Baldwin vs. Washington County we held that the situs of this property was in that county and we have no reason to change the views therein expressed, &c."

It will be observed that the Court of Appeals of Maryland did not believe that any Federal question was involved in the case and did not determine any; further that, in their judgment all questions of importance had been considered and determined in the decision of Baldwin vs. Washington County, from which decision the Supreme Court has said there was no appeal and nothing to be reviewed by Writ of Error.

I

In fact the main question in dispute and in fact the whole one was *the construction of the statutes of Maryland* as to the duties and responsibilities of guardians and the taxation of personal property in their hands; ON THESE QUESTIONS THE DECISIONS OF STATE COURTS ARE NOT REVIEWABLE BY THE FEDERAL COURTS, EXCEPT UPON SPECIAL AUTHORITY.

Commercial Bank *vs.* Buckingham, 5 Howard 317.

Adams *vs.* Preston, 22 Howard 473.

Johnson *vs.* Risk, 137 U. S. 300.

De Saussure *vs.* Gaillard, 127 U. S 216.

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II

NO FEDERAL QUESTION WAS INVOLVED; NONE NECESSARY TO THE DETERMINATION OF THE CASE; NONE DECIDED IN THE STATE COURTS.

While the plaintiffs in error did at the trial of the case below in some of their numerous pleas and prayers, attempt, by interjecting the 14th Amendment to the Constitution, to raise a Federal question, yet none was really in the case nor considered by the Court; there was no occasion to do so. There was not an argument advanced nor a question raised, refering to the Federal Constitution that had not been discussed and exhausted in the case of Baldwin vs. Washington County, as will appear by reference to Mr. Boston's briefs before to Court of Appeals and the Supreme Court The Court of Appeals had determined it was not worth while to consider them; and the Supreme Court had dismissed the writ of error then because the matter was exclusively within the jurisdiction of the Courts of Maryland. There is not a shade of difference in this case except the former case was the front view, this the rear view of the same question

Baldwin *vs* Washington County, 85 Md. 145.

If, it has been judicially and finally determined—as it has been—by the Court of last resort in Maryland, that Baldwin, Guardian, is responsible for the taxes sued for and must pay them, and the Supreme Court of the United States has said—as it has—that the decision of the Maryland Court is final and beyond its jurisdiction to review, what possible question can arise when that Guardian's bond is sued in Maryland, that is not determinable in the Maryland Courts, or that can be taken to the Supreme Court and thus give it jurisdiction to review and reverse a former decision, which it had determined was beyond its reach?

For the same reasons and upon the same authorities used in the former case, we ask that this writ of error be dismissed.

Murdock *vs.* Memphis, 20 Wall 590.

Eustis *vs.* Boller, 150 U. S. 367.

Johnson *vs.* Risk, 137 U. S. 300.

Choteau *vs.* Sibson, 111 U. S. 200.

Oxlay Stave Co., 166 U. S. 648.

Leeper *vs.* Texas, 139 U. S. 467.

California Pow-ler &c. *vs.* Davis, 151 U, S. 393.

HY. KYD DOUGLAS,
For Defendant in Error.

Office Supreme Court U.S.
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Clerk.

1899

No. 113.

Hy. of Douglas for D. F.

Filed Nov. 14, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 113.

BALDWIN & BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, USE OF D. FRANK HULL, &c., DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

For Defendant in Error.

HY. KYD DOUGLAS,
for Defendant in Error.

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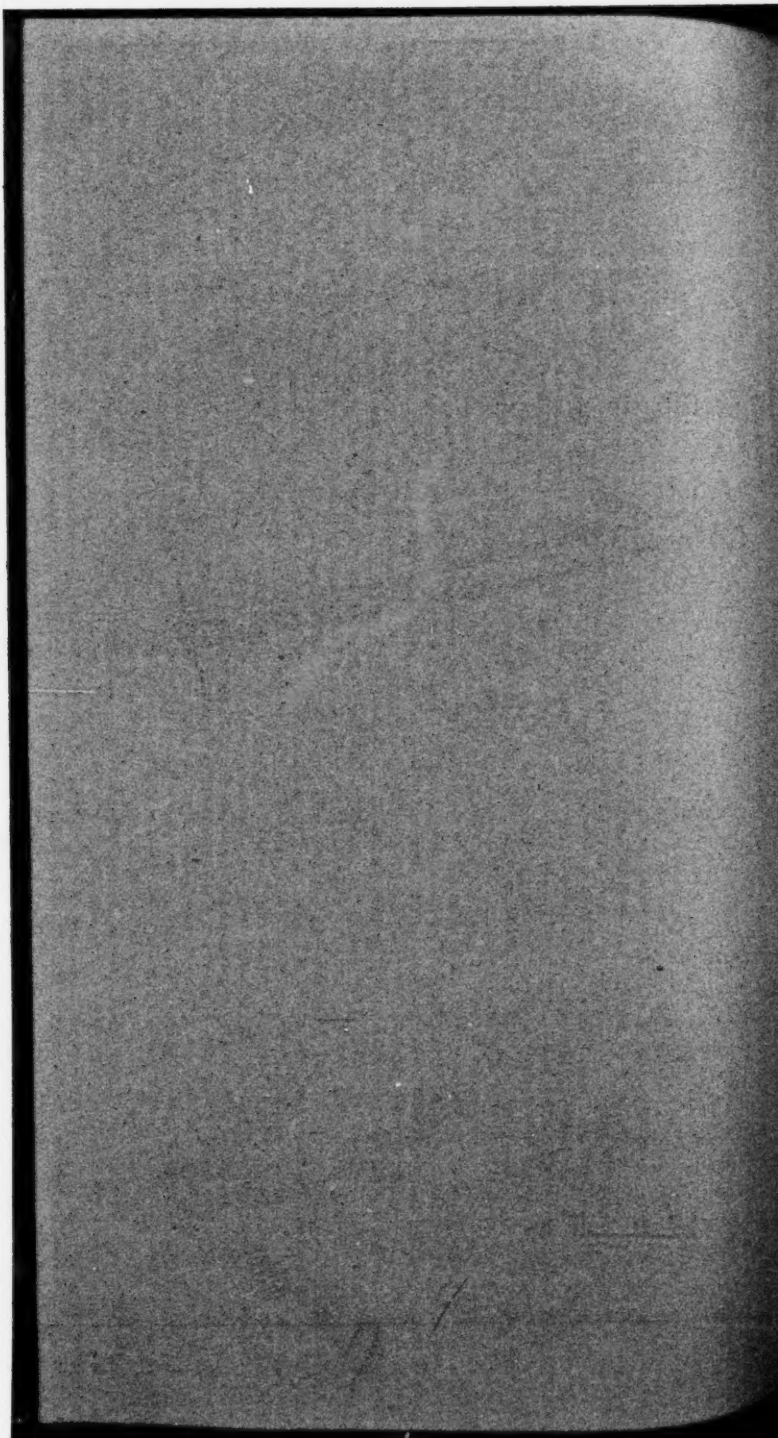

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1900.

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BALDWIN & BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, USE OF D. FRANK HULL, DEFENDANT IN ERROR

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

OF DEFENDANT IN ERROR.

In November, 1879, Christopher C. Baldwin was appointed guardian of Columbus C. Baldwin by the Orphans Court of Washington County, Maryland. He received, as guardian, large sums of money as his ward's distributive share of the estates of James Dixon Roman, the ward's grandfather, and Louisa M. Roman, his grandmother, both of whom lived and died in Washington County, where their estates were settled in the same Orphans' Court. Christopher C. Baldwin settled his guardian accounts regularly in that Court up to 1884 when he resigned and was succeeded by R. W. Baldwin, who settled six accounts and then died. W W. Baldwin was appointed guardian in place of the deceased in

1891, and settled a number of accounts. He, like his predecessor, Christopher and the ward Columbus, was and is a resident of New York City, and the ward became of age there in 1893. During the years mentioned the Register of Wills of Washington County, Maryland, made the annual returns he is required to make to the County Commissioners, taxes were levied against the estate in hands of said guardians, upon these returns, and duly paid up to the year 1893. The property taxed consisted of stocks and bonds of corporations located outside of the State of Maryland.

This guardian settled no account after 1892 until Feb. 15, 1895, when he settled his 2nd account, showing a balance due his ward of $63,381.56, but still did not settle a final account.

On February 12, 1895, the said W. W. Baldwin, as guardian, filed a bill in the Circuit Court for Washington County, Maryland, on the Equity side seeking to restrain the collection of the taxes for 1893 and 1894, then due. Upon hearing, the judgment of the Circuit Court was against him, this Bill was dismissed. He appealed to the Court of Appeals of Maryland and the judgment of the Circuit Court was affirmed. He took the case up on *writ of error* to the Supreme Court of the United States (No. 370 October Term, 1897) and the writ of error was dismissed for want of jurisdiction.

The Court of Appeals determined in that case (85 *Md.* 145) *that Washington County, Maryland had a right to levy the taxes in question, that the levy was properly made, that the situs of the property taxed was in Maryland and that the fact that the guardian personally lived elsewhere and kept the bonds and stocks of the ward with him, did not relieve the property from taxation.*

In dismissing the "writ of error" in that case, this Supreme Court determined that the decision of the State Courts on the questions raised was final.

This reasonable termination of the case did not terminate it. The guardian would not pay the taxes, nor would he come within the jurisdiction of our Circuit Court His bondsmen, the Plaintiffs in Error (those living) refused to pay and the Collector of Taxes was compelled to pursue them by suit in Baltimore City, including in his suit the additional taxes for 1895, which were in the same position. Before he could obtain a simple judgment against the guardian's bond for taxes, decreed by the highest court in the State to be due and collectable, the Defendant in Error was obliged to contend against 27 pleas, 23 additional pleas, 15 prayers, 5 bills of exceptions and one motion in arrest of judgment ; the attorneys for the Baldwins evidently forgetting that Methuselah's longevity and Job's patience had not survived to these days. Little wonder that the Court of Appeals of Maryland, with a tired feeling, says in its opinion—"Fortunately it does not often occur (we know of no such case in this State at least) that a guardian after going in Court for the purpose of testing the validity of the taxes imposed upon property in his hands, and after the question is settled against his contention by the Appellate Court of the State, will still undertake to avoid the payment of them."

But the State obtained judgment, at last, in the Superior Court of Baltimore City, it taking one year and two months to get it. The defendants again took the case to the Court of Appeals, which speedily disposed of it by affirming the judgment below, in a carefully prepared opinion. However, the same case, virtually, is in

this Honorable Court again, and again the defendant in error has moved to dismiss it for want of jurisdiction.

It is not pretended that this is a case of double taxation. The guardian never paid any taxes in New York where he and his ward lived, and had no desire to do so. As our Court of Appeals said in this case (85 Md. 167) "If the appellants did not want to pay taxes in Washington County, he could have had a guardian appointed where the ward resides," and further the guardian appointed in New York for young Baldwin "could have had the estate in the hands of the guardian here transferred to him, &c." *It is not a question of double taxation, rather the aviodance of all taxation.*

Upon this state of facts the defendant in error has again filed a motion to dismiss the writ of error in this case and has heretofore filed its brief, to which it begs leave to call the attention of this Court.

FURTHER SUGGESTIONS.

The lengthy argument made by the learned counsel for the Plaintiff in Error, is evidently intended to convince the Court not only that all the proceedings taken by our Orphans' Court and County Commissioners in this particular case were flagrantly violative of the 14th

Amendment to the Constitution of the United States; the breadth and depth of which has never yet been fully developed when an emergency seems to require further expansion; but also that the determination of our Equity Court, Baltimore Court and our Court of Appeals, in sustaining said proceedings, after numerous strenuous arguments, are not a whit better nor less destructive of the inalienable right of the migratory owner of stocks and bonds to evade taxation. The fact that our old Commonwealth has been regarded always as one of the most conservative of the old thirteen, and has never been charged with revenue rapacity nor bold defiance of constitutional restrictions, does not deter my learned brother from administering to her some of those sharp lessons in equitable taxation which has made New York City the refuge of the upright and the terror of the tax-dodger But among all the authorities cited by counsel for the Baldwins in the Court of Appeals of Maryland and considered and passed upon by it, I have not discovered one that sustains the contentions of the Plaintiffs in Error or justifies the criticisms of their attorneys against the constitutionality of our law of taxation or the construction put upon them by our Courts.

I am at a loss to add anything, in support of our position, to the able opinion of our Court of Appeals on this very case (89 Maryland 587) and on a previous hearing of it in 85 Maryland 145, and I beg leave, instead of troubling this Court with repitition, to refer to these two decisions.

1. The first point which seems to be pressed upon this Supreme Court for the Plaintiffs in Error is that the absent property of a non-resident is not taxable. This would seem to be an indisputable proposition in cases in which it is applicable, and it is not profitable to take up time in the discussion of such decisions in other States as may be referred to by counsel; like decisions may be found in Maryland. Their distinction from this case is observable by the blind. The Baldwins sought Maryland as the place to take out letters of guardianship; they settled their accounts for years in the Orphans' Court of Washington County without complaint; they may have had, as they say, the stocks and bonds of their wards in burglar-proof safes in New York, but they could have been required at any time to produce such assets or property before our Orphans' Court for examination, or if the emergency arose, as it did, for transfer to another guardian. How can it be said that the guardian for the time being had residence any where except in Maryland. Outside of our State, as guardian, he had no existence; he wasn't even a ghost. If he was tired of the taxes in Maryland—whose burden he does not even complain of—he might have had a guardian appointed in some other State, say New York, have received from the guardian in Maryland the property of the ward and submitted it to merciful assessment of a metropolitan tax-gatherer. For reasons that even an agriculturist might guess at, this was not done.

What application to a case like this have the authorities industriously collected by Counsel for the Plaintiff in Error? By what elastic or circumventive construction can this old law and practice in Maryland be considered as a violation of any provisions of the Constitution of the United States or subject to the disapproval of its Supreme Court?

I can add nothing further to what is said by the Court of Appeals of Maryland in this case in 89 Maryland, page 598, et seq.

2. The only other point made by the Plaintiffs in Error is that no notice was given to the guardian before the tax was levied. This seems an odd contention. By the ancient law and practice in Maryland—never heretofore questioned—the Register of Wills, annually before each levy, sends in to the County Commissioners a list of taxable property in the hands of Executors, Administrators and Guardians as shown by their settlements in the Orphans' Court. For years the Guardians of the Baldwins settled annually the taxes levied by the County Commissioners under this practice, without any question or complaint.

Even in this case it does not appear that any objection was made to the County that such notice was not given. In fact, in the original Bill filed in this case by the Baldwins to restrain the collection of these taxes, numerous as were its untenable allegations and charges, this one of want of notice was not even suggested, as will appear by the Record in 85 Maryland, 145.

The Report of the Register of Wills is required to be

made on or before the 1st of March annually. The levy of taxes is not made for two or three months thereafter, so that the Guardian, Executor or Administrator has ample time to enquire into and dispute the Register's return. The statute tells him when that return is made, so that nothing but his own neglect can prevent his discovery of any error in it. In this case, however, there is no pretence that the return was erroneous or the levy unlike that in other cases. It is only "A Point." Carried to its logical conclusion, the argument of the Plaintiffs in Error would meanthat each year before the annual levy County Commissioners should notify every owner of property of any kind in Washington County that he better look out or he will have taxes to pay If that is the law in any other State, it is not the law of Maryland. The two decisions of its Court of Appeals, in this case, clearly announce that fact, and it does not seem to have occurred to them that for years the Orphans' Court and County Commissioners of the State have been violating the Federal Constitution under the ever watchful eye of the Supreme Court of the United States.

From 1879 up to the date of this contention, the Register of Washington County made his annual report to the County Commissioners of the taxable property in the hands of the Baldwin Guardian. The taxes were duly levied and promptly paid by the Guardian, Columbus Baldwin, a native of Maryland. He knew that every dollar of his children's estate, so being administered, came from the estates of their grandparents, Mr. and Mrs.

James Dixon Roman, who lived and died in Washington County. In 1895, when Columbus Baldwin, the father had passed from the guardianship and passed from life, this contention began by the refusal of the new Guardian to pay the taxes of 1893 and 1894, and since then the fight has been kept up. First in the Court of Equity, of Washington County, thence to the Court of Appeals, and thence to the U. S. Supreme Court; again in the Supreme Court of Baltimore City, and thence to the Maryland Court, the contention of the Baldwin Guardian was made and lost at every trial. And now, when young Baldwin, the ward, in his manly, ripening years has gone "to where beyond these voices there is peace," the fight will not cease, and for the sixth time, the same old contention is pressed, now again in this Honorable Court.

We have been taught there is a point beyond which litigation should end; I believe it has been reached.

I therefore renew my motion to dismiss the Writ of Error or to affirm the judgment of the Maryland Court of Appeals.

HY. KYD DOUGLAS,
For Defendant in Error.

Supreme Court of the United States.

No. 113.—October Term, 1900.

William Henry Baldwin, Jr., and Summerfield Baldwin, Plaintiffs in Error, *vs.* The State of Maryland, to the Use of D. Frank Hull, Collector of State and County Taxes for Washington County, Maryland.	In error to the Court of Appeals of the State of Maryland.

[December 3, 1900.]

The facts are these: Prior to 1880 certain residents of Maryland died, leaving property to Columbus C. Baldwin, a minor. After the settlement of the estates of the decedents a guardian of the estate of said minor was appointed by the Orphans' Court of Washington County, Maryland. In consequence of the death of the guardian succeeding guardians were appointed, and in August, 1891, William Woodward Baldwin was duly appointed a guardian of the estate of such minor, and gave bond to perform his duty according to law. The present plaintiffs in error were sureties on that bond. During the years of the guardianship the Register of Wills of Washington County made annual returns to the county commissioners of the property of estates unsettled, and among those that of the estate of this minor, and taxes were levied thereon in accordance with law, and were duly paid up to the year 1893. The taxes for 1893 and 1894 being unpaid, the guardian filed a bill in the Circuit Court for Washington County to restrain their collection. The basis of his contention was that both he and the ward were non-residents of Maryland, and that the estate of the ward had been taken by him outside of the State. The Circuit Court decided against him, and denied the injunction. This judgment was affirmed by the Court of Appeals of the State. (85 Md. 145.) An attempt was made to review that judgment in this court, but the writ of error was dismissed (168 U. S. 705) on the ground that no Federal question had been distinctly preserved, or, if preserved, that there was a non-Federal question which was decisive of the case. Thereafter, the taxes being still unpaid, and the estate still unsettled, and the same statement presented by the Register of Wills to the county commissioners in respect to the taxes of 1895, this action was commenced to recover from the bondsmen the amount of the taxes for the years 1893, 1894 and 1895. Judgment was rendered against them in the trial court, and

affirmed by the Court of Appeals of the State, (89 Md. 587,) to reverse which judgment this writ of error has been sued out.

Mr. Justice BREWER delivered the opinion of the Court.

The controversy in the case reported in 85 Md. 145 was one between the estate of the ward and the State of Maryland. In that case the right of the State to compel a payment by the estate of the ward of taxes levied thereon for the years 1893 and 1894 was settled. The personality of the litigants, the form of the action, do not disturb the substantial fact that the controversy was between the estate of the ward and the State of Maryland, and that that controversy was determined in favor of the State. This court declining to disturb the final judgment of the Court of Appeals of the State of Maryland, that controversy is settled and beyond further litigation. The matter has become *res judicata* between the estate and the State. There is no pretence that the taxes of 1895 stand in any other condition as to matter of fact than the taxes of 1893 and 1894, which were in terms included within the litigation settled by the decision referred to. The ruling, therefore, as to the taxes for 1895 comes within the force of that decision, and is determined by the conclusion in respect to the taxes of 1893 and 1894. (*Johnson Co.* v. *Wharton*, 152 U. S. 252; *Last Chance Mining Co.* v. *Tyler Mining Co.*, 157 U. S. 683; *New Orleans* v. *Citizens' Bank*, 167 U. S. 371.)

The controversy, therefore, between the State of Maryland and the estate of the ward having been finally settled in favor of the State, and the only Federal question presented in this case being that already determined as to the right of the State to enforce a tax upon the property of the ward, it is unnecessary to consider the purely local question as to whether a judgment binding the estate binds also the sureties on the guardian's bond. (*Murdock* v. *City of Memphis*, 20 Wall. 590; *Myrick* v. *Thompson*, 99 U. S. 291, 297; *Swope* v. *Leffingwell*, 105 U. S. 3.)

The judgment of the Court of Appeals of Maryland is

Affirmed.

Mr. Justice WHITE and Mr. Justice PECKHAM dissent.

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